DOCUMENT RESUME

ED 342 111 EA 023 729

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TITLE Case Citations 1992, Twelfth Series: Employment.
INSTITUTION National Organization on Legal Problems of Education, Topeka, Kans.
REPORT NO ISBN-1-56534-075-2; ISSN-1059-4248
PUB DATE 92
NOTE 71p.
AVAILABLE FROM National Organization on Legal Problems of Education, 3601 S.W. 29th, Suite 223, Topeka, KS 66614.
PUB TYPE Legal/Legislative/Regulatory Materials (090)

EDRS PRICE MF01 Plus Postage. PC Not Available from EDRS.
DESCRIPTORS *Collective Bargaining; Court Litigation; *Dismissal (Personnel); Due Process; Elementary Secondary Education; *Employment; Equal Opportunities (Jobs); *Legal Responsibility; *Personnel Evaluation; School Law; *Torts

ABSTRACT

Collected case citations are organized in five major sections with brief summaries of relevant cases in subcategories followed by a table of cases cited. The major sections are as follows: (1) "Employment in General" (William Gordon); (2) "Termination of Employment" (Alan Robertson); (3) "Staff evaluation" (Virginia Helm); (4) "Tort Liability" (William Evans, Jr.); and (5) "Collective Bargaining" (Charles Russo). An index alphabetically lists the subjects by series (1 through 12) and by number in the series. (MLF)

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Case Citations
1992
TWELFTH SERIES
EMPLOYMENT

Edited by Nelda H. Cambron-McCabe, Professor and Department Chair
Department of Educational Leadership, Miami University (Ohio)

Number 1 — Employment in General, *William Gordon*

Number 2 — Termination of Employment, *Alan Robertson*

Number 3 — Staff Evaluation, *Virginia Helm*

Number 4 — Tort Liability, *William H. Evans, Jr.*

Number 5 — Collective Bargaining, *Charles Russo*

Index — First Series — Twelfth Series

EA 023 797

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ISBN 1-56534-075-2 ISSN 1059-4248

Case Citations
EMPLOYMENT IN GENERAL

TWELFTH Series, Number 1

Prepared by William M. Gordon, Ed. D., J.D.
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Constitutional Issues

Provisions of Louisiana's Children First Act allow for the decertification of teachers if they fail to obtain satisfactory evaluations. The court upheld the act reasoning that certification fell within the powers of the Board of Elementary and Secondary Education under the state constitution, even if such activities ultimately controlled a school boards' selection or removal of teachers. It also held that a tenured teacher whose certificate was revoked for failure to obtain a satisfactory evaluation was still entitled to due process protection provided in the state Teacher Tenure Act. ***Eiche v. Louisiana Bd. of Elementary and Secondary Educ.***, 582 So. 2d 186 (La. 1991).

A guidance counselor brought action alleging a title VII civil rights violation and wrongful termination. During 1986 she indicated an interest in, but failed to formally apply for, one of two available positions as college and career counselor. The positions were filled by two white male applicants. In addition to her school duties she maintained a private consulting service. In 1987 she was placed on paid leave when she was named in a twenty-four count felony indictment alleging Medicaid fraud. She later pled guilty to three misdemeanor counts. As a result of these charges she was officially terminated under the immorality and other good and just cause provisions of the state tenure act. Throughout the litigation the board maintained it terminated the counselor because of the fraud charges. The court granted the board summary judgment. ***Allen v. Denver Pub. School Bd.***, 928 F.2d 978 (10th Cir. 1991).

Applicant alleged that the reason he was denied employment was the principal's perception that he had homosexual tendencies. The court found the failure to hire on the basis of a perceived sexual orientation was arbitrary and capricious. The court concluded that there was no rational basis for consideration of sexual orientation when hiring a public school teacher. ***Jantz v. Muci***, 759 F. Supp. 1543 (D. Kan. 1991).

Tenured teacher charged with incompetence and insubordination was recommended for termination by a three-member panel convened to hear the complaint. Five years elapsed between the time the charges were made and the panel completed its deliberations and rendered its verdict. The teacher was suspended with pay during the five-year period. At the conclusion of the panel's work it was discovered that one of the panel members had been receiving an additional per diem of $100 per day over and above the $50 prescribed by law. This additional payment had been made by the school board. The panel member receiving the extra compensation had also maintained *ex parte* communications respecting the case during its pendency. The court found a violation of due process referring to the delay, the payment of five years salary not to teach, the overpayment of panel member, and characterized the proceeding as outrageous. The court ordered the reinstatement of the teacher, backpay and benefits plus a new hearing on the original charges. ***Syquia v. Board of Educ. of the Harpursville Cent. School Dist.***, 568 N.Y.S.2d 263 (Sup. Ct. 1991).

A school board notified a teacher she would not be renewed because she would soon reach the age of 70. The court held the action invalid holding the school board could not adopt a mandatory retirement policy based solely on age. ***Carlyle v. Independent School Dist. No. I-71 of McCurtain County***, 811 P.2d 618 (Okla. Ct. App. 1991).

When a school official learned of a teacher candidate's efforts to obtain a judicial review of her dismissal from another school system, the official refused to forward the teacher candidate's contract to the board for final approval. In an 42 U.S.C. § 1983 action the court, overturning a summary judgment in favor of the school authorities, found there was sufficient evidence to support a claim of unlawful retaliation under §1983. ***Norton v. School Dist. No. 1, City and County of Denver, Denver Pub. Schools***, 807 P.2d 1160 (Colo. Ct. App. 1990).

A former employee filed an EEOC complaint claiming racial discrimination and retaliation as the basis for her unsuccessful candidacy for a position. The court found the members of the school board believed in good faith that the district had established hiring policies in keeping with the law and constitution and did not knowingly take any retaliatory action against the teacher. ***Sherpell v. Humnoke School Dist. No.5 of Lonoke County***, 750 F. Supp. 971 (E.D. Ark. 1990)

Teachers who failed to pass the state required teachers examination were not denied due process. The court held that once the teachers failed the examination they no longer held valid teaching certification as required by statute. ***Swanson v. Houston Indep. School Dist.***, 800 S.W.2d 630 (Tex. Ct. App. 1990).

A series of actions on the part of a teacher over several years resulted in the school board passing a motion requiring the teacher to undergo a psychiatric evaluation. The court held the teacher had no property right to employment free of required psychiatric examinations and that he had received adequate due process. ***Sweeney v. Board of Educ. of Mundelein Consol. High School Dist. 120, Lake County, Illinois***, 746 F. Supp. 758 (N.D. Ill. 1990).

Teacher alleged violation of her first amendment right of free expression when she was not rehired.

She had criticized the school management in a television interview. The court held that retaliation by the superintendent in not rehiring the teacher was beyond the scope of his position and the teacher's commentary was within the scope of first amendment protection. ***Blackburn v. Floyd County Bd. of Educ.***, 749 F. Supp. 159 (E.D. Ky. 1990).

A social worker brought an action for retaliatory discharge, defamation and violation of her first amendment rights when she was suspended by the superintendent for inappropriate conduct and violating direct orders. Shortly after her suspension she commenced action claiming that school authorities had violated her right of free speech and made defamatory statements about her. While serving her suspension she was notified by the board that termination proceedings had commenced. A hearing officer recommended her discharge and the board adopted the recommendation. The discharge was upheld by the court. ***Graham v. Special School Dist. No. 1***, 462 N.W.2d 78 (Minn. Ct. App. 1990)

A physical education teacher was placed on administrative leave with pay pending an investigation. He was subsequently terminated and requested a post-termination hearing. The court held due process required a meaningful opportunity to be heard before a person could be deprived of a constitutionally protected interest. The court, finding for the teacher, provided a list of factors required for a valid due process hearing. ***Deuel v. Arizona State School for the Deaf and Blind***, 799 P.2d 865 (Ariz. Ct. App. 1990).

A nontenured teacher brought an action alleging her contract was not renewed in retaliation for exercise of her first amendment rights. The teacher taught a journalism class that published a school newspaper. One issue contained articles that the principal felt portrayed the school in a negative light. The principal made his concerns known and asked for a printed retraction. The next issue did not contain the retraction but a report on the principal's request. During the following year the teacher was reprimanded by the principal on several occasions and in her evaluations there were areas identified as needing improvement. At the end of the year her contract was not renewed. She filed a 42 U.S.C. § 1983 action alleging her nonrenewal was in retaliation for the previous year's newspaper incident. The court held that her conduct and her academic freedom were protected by the first amendment and the facts warranted a jury decision. ***Watson v. Eagle County School Dist. RE-50***, 797 P.2d 768 (Colo. Ct. App. 1990).

Teacher Applicants

When a position was posted for a teacher for the gifted grades 5-8 and for the learning disabled grade 6, there were five applicants. An unsuccessful candidate filed an action claiming she had been the best qualified for the position and was thus entitled to the position. The court found the board acted arbitrarily and capriciously by failing to place the most qualified applicant in the position and ordered a writ of mandamus directing the board to hire the rejected applicant. ***Egan v. Board of Educ. of Taylor County***, 406 S.E.2d 733 (W. Va. 1991).

Discrimination in Employment

Age Discrimination

A 44-year old permanent substitute teacher, with prior fulltime teaching experience in the system, applied for five different positions. He was interviewed for each position but was not recommended for any of them. He brought an action against the school system claiming age discrimination. The court ruled the plaintiff failed to identify specific employment practices and to offer statistical evidence that illustrated the exclusion of job applicants based on age. ***Wooden v. Board of Educ. of Jefferson County, Ky.***, 931 F.2d 376 (6th Cir. 1991).

When a superintendent was not renewed he brought an age discrimination action. The court stated, "Where a younger person is hired in preference to an older person, a rebuttable presumption of discrimination is created." ***Murray v. Mount Pleasant Indep. School Dist.***, 754 F. Supp. 535 (E.D. Tex. 1990).

A school district changed a teacher's contract from "continuing" to "annual" when he turned seventy. The court held this constituted age discrimination. ***Equal Employment Opportunity Comm'n v. School Bd. of Pinellas County, Fla.***, 742 F. Supp. 622 (M.D. Fla. 1990).

Gender Discrimination

An unsuccessful female applicant for a superintendency position filed a claim of discrimination based upon sex. The court used a three-part analysis to determine gender discrimination: (1) plaintiff has the burden of proving a *prima facie* case of sex discrimination, (2) defendant then has the burden of producing evidence that the plaintiff was rejected or someone else was selected for nondiscriminatory

reasons, (3) plaintiff then has the burden of proving that the reason offered by the defendant was not its true reasons but a pretext for discrimination. ***Northeast Metro. Regional Vocational School Dist. School Comm. v. Massachusetts Comm'n Against Discrimination***, 575 N.E.2d 77 (Mass. App. Ct. 1991).

A female employee, hired as noncertified staff, brought an action claiming sex discrimination. She claimed her wages were less than her male coworkers. The board had a stepped salary schedule with five named pay grades that reflected continuing service, but an employee could also receive merit raises outside the step increases. The court held that there was no discrimination and that the discrepancy in salary was not the result of a bona fide seniority system. ***Mitchell v. Jefferson County Bd. of Educ.***, 936 F.2d 539 (11th Cir. 1991).

A pregnant teacher made a request to use her accumulated sick leave for a portion of the period of disability caused by her pregnancy, and that following the expiration of her sick leave she would go on maternity leave for the remainder of the school year. The school authorities refused to allow the teacher to take both leaves requiring her to choose one. The teacher claimed the board denial had a disparate impact on pregnant women. The court ruled that the board policy preventing teachers from remaining at home using accumulated sick leave after the end of pregnancy did not violate the Pregnancy Discrimination Act and that the choice of foregoing returning to work in favor of spending time with a newborn child was not an inevitable consequence of the medical condition related to pregnancy. ***Maganuco v. Leyden Community High School Dist. 212***, 939 F.2d 440 (7th Cir. 1991).

A female employee was passed over for promotion in favor of two male candidates. Both male candidates lacked minimum qualifications for the respective positions. The court held that the use of subjective criteria is permissible but when used to favor an unqualified person it is discriminatory. ***Farber v. Massillon Bd. of Educ.***, 917 F.2d 786 (6th Cir. 1990).

A male teacher claimed sex discrimination when denied a one-year child-rearing leave that was available to female teachers. The court found that provisions in the collective bargaining agreement allowing only female teachers leave for child rearing was in conflict with title VII. ***Schafer v. Board of Pub. Educ. of the School Dist. of Pittsburgh, Pa.***, 903 F.2d 243 (3d Cir. 1990).

A school system advertised for the position of Manager of Procurement, or Contracts Manager, for Minority Business Enterprise and Woman's Business Enterprise (MBE/WBE). A white male applied. Although he was in the top six candidates, he was not chosen for the position; the position was awarded to a woman. An EEOC complaint was filed. The court subsequently granted defendant school system's motion for summary judgment, holding the school system had a legitimate, nondiscriminatory reason for not hiring the male. ***Collins v. School Dist. of Kansas City, Mo.***, 727 F. Supp. 1318 (W.D. Mo. 1990).

A female teacher brought an action against her union for illegal sex discrimination. During the time the teacher was on maternity leave from the system, the union policy was not to credit a person with seniority under the system's requirement of consecutive years of service. The court ruled such a policy had a disparate impact on female teachers. ***Lynn Teachers Union Local 1037, AFT, AFL-CIO v. Massachusetts Comm'n Against Discrimination***, 549 N.E.2d 97 (Mass. 1990).

Handicap Discrimination

A principal who was a recovering alcoholic claimed violation of the Rehabilitation Act when he was nonrenewed. The court held that the principal's contract was an at-will contract and that there was no property interest in his continuing employment. ***Pierce v. Engle***, 726 F. Supp. 1231 (D. Kan. 1989).

National Origin Discrimination

When a hispanic female was passed over in favor of a black female for the position of assistant principal, she brought an action claiming discrimination based upon race and national origin. Plaintiff's claim was dismissed with the court finding no discrimination based upon either race or national origin. ***Rosario-Olmedo v. Community School Bd. for Dist. 17***, 756 F. Supp. 95 (E.D.N.Y. 1991).

Race Discrimination

A black teacher, certified in another state, was employed to teach reading even though she had not passed the Initial Teacher Certification Test as required by state statute. The school board with approval from the state department of education issued her a temporary certificate allowing her to teach and to take the certification test. She taught for three years. Each year she failed the test twice, and each year the state granted another temporary certificate allowing her to continue teaching. During her third year of employment the state settled a class action [***Allen v. Alabama State Bd. of Educ.***, 816 F.2d 575 (11th Cir. 1987)] that in part provided a

preliminary injunction against the use of any teacher certification examination that had a disparate impact on black teacher candidates. The teacher was entitled to certification under the terms of the consent decree, but she was dismissed by the board because she did not hold a valid state teaching certificate. She brought an action claiming the standard used was discriminatory and a violation of title VII. The court held for the plaintiff. ***Richardson v. Alabama State Bd. of Educ.***, 935 F.2d 1240 (11th Cir. 1991).

Over several years a black administrator made application for several administrative positions in a school system. In each instance he was passed over with the positions being awarded to white candidates. After filing EEOC charges he was reassigned from a high school principalship to a middle school principalship and then to a 9th grade center principalship. The court held for the school system finding the appointments of the white candidates were not racially based and the claims of retaliation were not actionable under 42 U.S.C. §1981. ***Senigaur v. Beaumont Indep. School Dist.***, 760 F. Supp. 1200 (E.D. Tex. 1991).

Two black elementary teachers were denied promotion to supervisory positions. They brought a title VII action. The court held for the defendant; the board met the burden of articulating a legitimate nondiscriminatory reason for not hiring or promoting the individuals. ***Weber v. Port Arthur School Bd.***, 759 F. Supp. 341 (E.D. Tex. 1991).

A teacher who had been dismissed following his failure to pass the state mandated Examination for Current Administrators and Teachers brought an action claiming race and age discrimination. The court did not find evidence of disparate impact where the pass rate of black examinees was not less than four-fifths of that of white examinees. ***Fields v. Texas Cent. Educ. Agency***, 754 F. Supp. 530 (E.D. Tex. 1989).

A black female teacher candidate was not notified of several vacancies though her application was on file with the school system. One of the positions was filled by a white applicant who was the wife of one of the system's teachers. The qualifications of the white teacher were similar to those of the black teacher. The plaintiff did not make an adequate case for disparate impact but did prevail because of the board's practice of nepotism and general practice of posting notice of vacancies only in the schools. ***Thomas v. Washington County Schools***, 915 F.2d 922 (4th Cir. 1990).

A white social worker brought an action when the school authorities decided to retain a less-senior black social worker during a reduction in force. The court held the action by the school board constituted discriminatory action against the white worker and was impermissible. ***Cunico v. Pueblo School Dist. No. 60***, 917 F.2d 431 (10th Cir. 1990).

An employee of Asian descent claimed racial discrimination when a black employee was transferred into a position for which he had applied. The school system established that there was a legitimate nondiscriminatory reason for transferring the black employee in place of the employee of Asian descent. ***Silpacharin v. Metropolitan Gov't of Nashville and Davidson County***, 797 S.W.2d 625 (Tenn. Ct. App. 1990).

A teacher of Chinese descent was denied a promotion to department chairperson by a black high school principal. The system moved for summary judgment. The motion was denied; the teacher established a viable claim under 42 U.S.C. § 1981. ***Wohl v. Cleveland Bd. of Educ.***, 741 F. Supp. 688 (N.D. Ohio 1990).

A black female candidate, 62 years of age, was rejected for a position as an assistant high school principal. The successful candidate was a younger, white female. The rejected candidate sued claiming racial discrimination. The court granted summary judgment to the school system, noting affirmative action did not require employers to hire minority over white candidates whose qualifications were found to better serve the school system. ***Morton v. City School Dist. of the City of New York***, 742 F. Supp. 145 (S.D.N.Y. 1990).

A black nontenured teacher was nonrenewed. She brought an action charging the school board's refusal to renew her contract was disparate treatment and the state teacher certification test had a disparate impact on black teachers. The court held there was no disparate treatment; but there was disparate impact. The court provided a lengthy legal analysis of disparate impact. ***Richardson v. Lamar County Bd. of Educ.***, 729 F. Supp. 806 (M.D. Ala. 1989).

Religious Discrimination

A noncatholic teacher in a Catholic school brought a title VII action after she was nonrenewed because of her remarriage. The court pointed out that title VII specifically exempted religious institutions from much of title VII's prohibition against employment discrimination on the basis of religion. The court held that in the instant case the title VII religious exemption also applied to conduct that did not conform to the religious mores of the school. ***Little v. Wuerl***, 929 F.2d 944 (3d Cir. 1991).

A private corporation contracted to provide auxiliary services to a local school district in conformity with the state statutes. A candidate interviewed a corporate official for a counselor's position at two Catholic elementary schools. During the interview she wore a two-toned green scarf tied to the side. She stated during the interview that she covered her head because she was muslim. She was not offered the position. The reason given was that her employment would be a violation of a statutory and contractual duty prohibiting instructional employees from wearing religious garb. The court held that the head coverings worn were neither factually religious nor likely to be perceived as such. ***Equal Employment Opportunity Comm'n v. Reads Inc.***, 759 F. Supp. 1150 (E.D. Pa. 1991).

A noncatholic elementary teacher was nonrenewed when she failed to obtain an annulment from her first marriage before remarrying. The court held a religious organization's right to make employment decisions, based upon religion, existed throughout the employment relationship, not just during the hiring process. ***Little v. St. Mary Magdalene***, 739 F. Supp. 1003 (W.D. Pa. 1990).

Suspension of a Teacher

A tenured teacher was suspended for two years after being found guilty of fourteen counts of unprofessional conduct. The court found the penalty appropriate given the seriousness of the charges. ***Land v. Commissioner of Educ. of the State of N.Y.***, 571 N.Y.S.2d 623 (App. Div. 1991).

A tenured elementary teacher was charged with two counts of insubordination and conduct unbecoming a teacher. During the course of correcting a disruptive student, the teacher had grabbed the student by the shoulder or neck, turned him around, and then pushed him into a chalkboard. The teacher was suspended for one year without pay. The court held the penalty was not excessive. ***Cargill v. Sobol***, 565 N.Y.S.2d 902 (App. Div. 1991).

A teacher was tenured as a certified high school business and driver's education teacher. The business position was eliminated and he was assigned to teach science, an area where he lacked certification. He was then suspended, without pay, because he was teaching in an area without proper certification. The court held the suspension had to be without pay even though the teacher was placed in a position where he was unqualified. ***Winter v. Board of Educ. for the Rhinebeck Cent. School Dist.***, 565 N.Y.S.2d 918 (App. Div. 1991).

A teacher was suspended 15 days without pay for unprofessional conduct. The parties agreed the teacher had corrected his conduct and there had been total remediation. The court found no substantial evidence justifying the suspension. ***Crowl v. Commission on Professional Competence of the Governing Bd. of the San Juan Unified School Dist.***, 275 Cal. Rptr. 86 (Cal. Ct. App. 1990).

A teacher was discharged for disciplinary reasons by the school board. He appealed to the state Tenure Commission. The Tenure Commission reduced the discipline to one semester suspension without pay. The court held that the Tenure Commission was empowered to reduce the discipline and there was no reasonable and just cause for discharge. ***Lakeshore Pub. Schools Bd. of Educ. v. Grindstaff***, 461 N.W.2d 651 (Mich. 1990).

The court upheld a two-day suspension without pay and restoration of $1.00 per book fine imposed by the board on a tenured teacher who removed the glossaries from 146 science books. ***Board of Trustees of Hamilton Heights School Corp. v. Landry***, 560 N.E.2d 102 (Ind. Ct. App. 1990).

Three teachers were suspended without pay for two and one-half days. They had been seen drinking alcoholic beverages on a school bus on their way home from a mandatory staff only field trip. ***Debar v. Trustees, Yellowstone County Elementary School Dist. No. 2***, 796 P.2d 1081 (Mont. 1990).

Teacher Certification

A teacher resigned his position. Subsequent to his resignation his license was revoked on moral grounds. The teacher had admitted to an investigator hired by the school system that he had sexual contact with male students while employed as a teacher. Admissions to an investigator were obtained after the investigator had falsely advised petitioner the evidence of the misconduct already existed and without his confession criminal prosecution would ensue. The court denied the motion to suppress the evidence. ***Stedronsky v. Sobol***, 572 N.Y.S.2d 445 (App. Div. 1991).

A physical education teacher who sustained a knee injury that precluded her from continuing in her position could not be required to continue as a classroom teacher, teaching in a second field where credits had been earned twenty to thirty years previously. ***Abshear v. Teachers' Retirement Bd. of the State of Cal.***, 282 Cal. Rptr. 833 (Cal. Ct. App. 1991).

A tenured teacher was terminated without a hearing because her teaching certification had expired. Upon being notified of her dismissal, the teacher requested a hearing before the board. The request was denied. The court provided that expira-

tion of a teacher's certificate held by a tenured teacher does not automatically result in loss of right to employment and a school board must comply with the state tenure statute in order to dismiss the teacher. The court then dismissed the action on procedural grounds. ***Frey v. Adams County School Dist. No. 14***, 804 P.2d 851 (Colo. 1991).

A teacher was arrested and charged with two counts of marijuana distribution and one count of agreeing to distribute. Subsequently, the charges were dismissed and an order entered to expunge all records. When six months after the expungement order a local newspaper described the litigation, the state board of education initiated steps to revoke the teacher's certificate. The board held a hearing and admitted testimony from the arresting officer and a paid informant. The court held that the use of evidence of the underlying events that were part of the expunged criminal records violated the district court's order of expungement. ***Ambus v. Utah State Bd. of Educ.***, 800 P.2d 811 (Utah 1990).

Two unlicensed Head Start teachers' aides, who were later reassigned as instructors, requested experience credit when they became certified elementary teachers. A hearing examiner ordered the school board to credit the teachers with their years and to compensate them for wages and benefits they never received because their experience increments had been denied. The examiners decision was affirmed by the court. ***Bright v. Tucker County Bd. of Educ.***, 399 S.E.2d 1765 (W. Va. 1990).

Administrators

An unsuccessful candidate for the position of assistant junior high school principal claimed she was better qualified than the successful applicant and presented evidence to that effect. The court pointed out that there was no statutory language requiring that the hiring of assistant principals must be based primarily on qualifications. The school board's decision not to hire the candidate was upheld. ***Pockl v. Ohio County Bd. of Educ.***, 406 S.E.2d 687 (W. Va. 1991).

An individual employed as superintendent and principal was given a six-year contract that was later amended to eliminate his duties as principal. Shortly thereafter he was terminated as superintendent. Upon appeal to the State Chancellor, it was determined that the evidence was insufficient to support the dismissal and reinstatement for the remaining term of the contract was ordered. The superintendent moved to amend the final judgment to reinstate all tenure rights as superintendent, principal and teacher. The court held he was not entitled to permanent tenure because he had failed to comply with the statute that required him to notify the board prior to reemployment that if retained, he would acquire tenure status. ***Reeves v. Etowah City School Bd. of Educ.***, 806 S.W.2d 176 (Tenn. 1991).

A principal does not retain his continuing contract in his original school system when he accepts a principalship in another school system within the state. ***Lee-Warren v. School Bd. of Cumberland County***, 403 S.E.2d 691 (Va. 1991).

An unsuccessful candidate for a high school principalship sought a writ of mandamus to obtain the position. One of the contentions the candidate made was that he had seniority over the successful candidate. The court holding for the school system noted that the reappointment was based upon the applicant's qualifications for the job, and seniority should have a bearing on the selection process only when the applicants had otherwise equivalent qualifications. ***Staton v. Wyoming County Bd. of Educ.***, 400 S.E.2d 613 (W. Va. 1990).

A high school principal, who was a tenured teacher in the system, was dismissed on charges of insubordination, incompetency, inefficiency, and neglect of duties. He argued that the charges upon which he was dismissed reflected only upon his appointment as principal. The court ruled his termination as a teacher as well as principal was warranted since the charges reflected adversely on his ability to subject himself to the authority of his superiors. ***Cooper v. Williamson County Bd. of Educ.***, 803 S.W.2d 200 (Tenn. 1990).

A principal who was reassigned to the position of Director of Administrative Services, filed a grievance challenging the transfer. The Employees Grievance Board found the school system had met all procedural requirements in effecting the transfer. The fact that the principal had been certified longer than any of the applicants and that he had previously served successfully as a principal was insufficient to show he was the best candidate for the position. The court held that the board was not required to hire the principal. ***Tenny v. Board of Educ. of the County of Barbour***, 398 S.E.2d 114 (W. Va. 1990).

A principal, who was injured in an altercation, was terminated for violating the school board's policy against corporal punishment. In overturning the decision, the appellate court determined that the standard of "willful" and "persistent" did not apply to the principal. ***Hudson v. Wellston School Dist.***, 796 S.W.2d 31 (Mo. Ct. App. 1990).

A rejected applicant for a principal's position brought an action against the school board claiming a violation of the state's open meetings act. The court held the use of the description "employment of

personnel" failed to provide full notice of the subject matter of the meeting with respect to filling the position of principal. ***Point Isabel Indep. School Dist. v. Hinojosa***, 797 S.W.2d 176 (Tex. Ct. App. 1990).

A school board with three newly elected members directed the superintendent to notify a principal, who had permanent status as a teacher, that he was being reassigned as a classroom teacher. The appellate court held that the governing board has the ultimate authority to determine whether to renew a principal's contract. ***McFall v. Madera Unified School Dist.***, 272 Cal. Rptr. 345 (Cal. Ct. App. 1990).

A superintendent was nonrenewed. The state supreme court held that a superintendent is a probationary certified employee and, therefore, entitled to only an informal hearing. ***Matrisciano v. Board of Educ. of Brady School Dist. No. 6, Lincoln County***, 459 N.W.2d 230 (Neb. 1990).

A superintendent lost her reelection bid but while still holding the office nominated herself to fill a vacant principal job. The new superintendent brought suit to declare the contract null and void on the ground of the former superintendent's gross abuse of power in nominating herself. The court held this was a local controversy requiring the exhaustion of administrative remedies. ***Bacon v. Brewer***, 395 S.E.2d 383 (Ga. Ct. App. 1990).

Substitute Teachers

A substitute teacher who taught 162.5 and 173 days of two consecutive 190 day academic years sought declaratory judgment that she was tenured under state law. Applying a five-part test, the appellate court ruled the teacher should be classified as a temporary substitute and therefore not entitled to tenure. ***Welk v. Iowa City Community School Dist.***, 470 N.W.2d 57 (Iowa Ct. App. 1991).

A substitute teacher brought an action alleging the school district was required by statute to hire her as a full-time teacher. The appellate court held that the preferential hiring rights were limited to teachers who had worked specified days in the current or immediate preceding school year. Summary judgment was granted to the school system. ***Morgan v. Taylor School Dist.***, 466 N.W.2d 322 (Mich. Ct. App. 1991).

Leaves of Absence

A teacher was entitled to reinstatement to a position for which he was qualified upon his return from a leave of absence even though during the leave he had accepted a position with a school system in another state. The court found he had not deceived the school system when he had requested the leave. ***Rininger v. Bennett County School Dist.***, 468 N.W.2d 423 (S.D. 1991).

A tenured teacher requested and received a five-year extended leave of absence. During the leave she and her family moved to another community. In her new community she became a contracted long-term substitute signing three one-year contracts. She subsequently notified her original district that she intended to return before the expiration of her five-year leave. The district agreed to her return but upon finding that she had been employed as a contract teacher during her leave informed her that it would treat her employment during the leave as a voluntary resignation. The board contended that she had violated her extended leave agreement by accepting the contract in the other school system. The court decided in favor of the school district. ***Dokmo v. Independent School Dist. No. 11, Anoka-Hennepin***, 459 N.W.2d 671 (Minn. 1990).

Reduction in Force

A teacher on a continuing contract was placed on unrequested leave when the school system was realigned due to declining enrollment and financial limitations. The court ordered the board to realign personnel and assignments in order to recall the teacher and to pay his one year lost salary. ***Petition of Dallman***, 470 N.W.2d 148 (Minn. Ct. App. 1991).

When two teachers were hired, one teacher was placed on the schedule at step five and the other at step six. The teacher placed at step six had more teaching experience when hired. Subsequently, they were both placed on the same salary step. When a staff reduction was necessitated the court ruled that the governing factor was seniority and that the teacher beginning with greater experience had the greater seniority. ***Frederich v. Independent School Dist. No. 720***, 465 N.W.2d 692 (Minn. Ct. App. 1991).

Several elementary teachers were terminated June 30, 1981 due to a reduction in force. They were placed on a "Preferred Eligibility List" that entitled them to reinstatement if vacancies arose within seven years from the date of abolition of their positions. The appellate court ruled that positions created by the resignation of several teachers on June 30, 1988 arose at earliest July 1, 1988, the first date on which the vacancies occurred, and therefore the former teachers were ineligible because the available date for reemployment was beyond the seven-year time

period. ***Raben v. Board of Educ. of the Hauppauge Union Free School Dist.***, 572 N.Y.S.2d 921 (App. Div. 1991).

A tenured Spanish teacher, who had been teaching less than full time for several years, was released in a reduction in force action by the school board. The Spanish teacher was not qualified to teach any other subject or grade levels. The teacher filed a mandamus action seeking reinstatement. The court ruled the teacher had no clear right to reinstatement, irrespective of her tenure at the time of her dismissal, and thus was not entitled to mandamus. ***Hampson v. Board of Educ., Thornton Fractional Township High Schools, Dist. 215, Cook County***, 576 N.E.2d 54 (Ill. App. Ct. 1991).

A tenured teacher was improperly discharged in a reduction in force effort. She sued for reinstatement and was successful in her action, receiving reinstatement with back pay and benefits. The court reduced her backpay award because she had been provided the opportunity to mitigate her damages by accepting part time employment during her period of suspension. The court upheld the offset stating the teacher was obligated to take reasonable steps to avoid or minimize her loss by accepting the part time position in her area. ***Gross v. Board of Educ. of Elmsford Union Free School Dist.***, 571 N.Y.S.2d 200 (N.Y. 1991).

A tenured teacher's contract was not renewed following a reduction in force decision based upon financial reasons. The teacher's course load was taken over by teachers with less seniority than the terminated teacher. The court found that reduction in staff is not required to be accomplished on seniority basis. ***O'Hair v. Board of Educ., Unified School Dist., No. 300, Comanche County***, 805 P.2d 405 (Kan. Ct. App. 1990).

A nontenured teacher was nonrenewed. She claimed that the board had failed to follow its own staff reduction procedures and that she had a right of recall. The court held that the nonrenewal of a probationary teacher did not invoke the staff reduction policy. ***Jackson v. Randolph County Bd. of Educ.***, 565 So. 2d 641 (Ala. Civ. App. 1990).

A probationary teacher was one of sixty-four nontenured teachers nonrenewed due to a reduction in force. The teacher received written notice of her nonrenewal. Subsequent to her notice the district rehired several nontenured teachers with less seniority. The teacher brought suit, alleging breach of employment contract due to the school system's failure and refusal to apply the system's RIF policy. The court concluded the RIF policy was not part of the provisional teacher's contract and therefore did not apply. ***Kuta v. Joint Dist. No. 50(J) of the Counties of Delta, Gunnison, Masa and Montrose***, 799 P.2d 379 (Colo. 1990).

A teacher with over ten years of service was furloughed when it became necessary to reduce the high school faculty by two social studies teachers. The board held that the teacher's seniority had been reduced by four years when he had taught special education without valid certification. The court found that "checker-boarding" had been used in arriving at the teacher's furloughing and that he was not the social studies teacher with the least seniority. ***Arcurio v. Greater Johnstown School Dist.***, 582 A.2d 402 (Pa. Commw. Ct. 1990).

A decision to discharge a psychometrist due to a reduction in force requiring consolidation of the psychometrist position with a counselors position was not a violation of due process. ***Stewart v. Fort Wayne Community Schools***, 564 N.E.2d 274 (Ind. 1990).

An industrial arts position was reduced to a part time position. The tenured industrial arts teacher holding the position argued that he was a general high school teacher and that because he was senior to other members on the staff a less senior teacher should be placed on part time. The court held he was tenured as an industrial arts teacher and not as a general secondary teacher and, therefore, his position should be reduced to part time. ***Wild v. Board of Educ. of the Forestville Cent. School Dist.***, 560 N.Y.S.2d 563 (App. Div. 1990).

A teacher with twelve years experience argued that he had not been placed correctly on the seniority list, and as a result he was nonrenewed in a reduction of force. The teacher claimed he had properly appealed his placement on the seniority list and had been improperly nonrenewed. The court found that he had failed to file a written request for a hearing within the required time period and granted summary judgment to the school system. ***Greene v. Pateros School Dist.***, 799 P.2d 276 (Wash. Ct. App. 1990).

A tenured teacher who had agreed to teach part time requested assignment to a full time position when one became available. During the school year the board hired a new teacher to fill a full time position for which the part time teacher was qualified. The court held that a tenured teacher who has agreed to a reduced load can assert bumping rights against a new nontenured who has been hired in the area where the tenured teacher was qualified. ***Deem v. Board of Educ. of Triad Community Unit School Dist. No. 2, Madison County***, 558 N.E.2d 291 (Ill. App. Ct. 1990).

A certified teacher who had served in administrative positions, but whose position was eliminated by a reduction in force, sought a transfer to other

administration positions instead of returning to a teaching position. The court held that central office administrators do not accrue seniority while occupying administrative positions. Such positions are separate from their overall seniority. ***Board of Educ. of the County of Harrison v. Bowers***, 396 S.E.2d 166 (W. Va. 1990).

Involuntary Leave

A teacher was placed on a mental health leave when school authorities perceived that she suffered from emotional problems that interfered with the successful performance of her teaching duties. The teacher, who was tenured, filed an action claiming violation of due process, racial discrimination, state law breach of contract and state law tort claim. The court held, though the teacher had a property interest in her employment, when provided written notice, an oral explanation and an opportunity to respond by undergoing a psychiatric examination by a psychiatrist of her choosing, she had not been denied due process. ***Brown v. Houston Indep. School Dist.***, 763 F. Supp. 905 (S.D. Tex. 1991).

A teacher sought reinstatement to full-time teaching after being placed on an involuntary leave of absence. The teacher had been recalled to a less than full time position and then once again placed on unrequested leave. When the school district was reorganized there were positions within the teacher's licensed area. The court held that the teacher had to be included on a seniority list for appointment to the less than full-time position he held at the time of his unrequested leave and not the full time position in his area. ***Sherek v. Independent School Dist.***, 464 N.W.2d 582 (Minn. Ct. App. 1990).

A tenured teacher was placed on an unrequested leave of absence when the boards of two districts operating under an interdistrict cooperative agreement decided to eliminate an industrial arts position for purposes of cost reduction. The teacher argued that a realignment of the districts' staff would preserve his position and reduce or eliminate a probationary teacher instead. The court in upholding the board's position found that the proposed realignment would be disruptive and costly to the systems. ***In re Hagen***, 465 N.W.2d 707 (Minn. Ct. App. 1991).

A tenured principal was reassigned from his position as principal to classroom teacher when the school system was reorganized and his position eliminated. He resigned the teaching position and accepted a principal's job in another district. When a principalship became available in his original district, he sought the position claiming he had retained his tenure because in his resignation he had specifically reserved his rights to an administrative position. The court held that he was entitled to the available principal position and that he was on unrequested leave when the system removed him from his principalship and assigned him to a classroom. ***Mohn v. Independent School Dist. No. 697, Eveleth***, 471 N.W.2d 723 (Minn. Ct. App. 1991).

Extra-Duty Employment

The interpretation of a State of California Board of Education regulation requiring a school system to conduct an annual search among its certificated employees before employing a coach from outside the school system was held to be invalid and in violation of the legislative intent of the regulation. ***San Jose Teachers Ass'n, CTA, NEA v. Barozzi***, 281 Cal. Rptr. 724 (Cal. Ct. App. 1991).

A vocational guidance counselor's salary was reduced when the board eliminated all extended contracts due to budget cutbacks. The court held the compensation for duties performed beyond the basic school year was subject to continuing contract law and was entitled to protection of statutory nonrenewal procedures. ***Wenman v. The Center Bd. of the Valley City Multi-Dist. Vocational Center***, 471 N.W.2d 461 (N.D. 1991).

Coaches who were on extended school year contracts were also entitled to receive extra stipends for their coaching duties. ***Helena-West Helena School Dist. #2 v. Randall***, 796 S.W.2d 586 (Ark. Ct. App. 1990).

A job was posted for the position of physical education teacher and athletic trainer. An unsuccessful applicant brought an action alleging that the posting was an improper joinder of employment positions. The court agreed holding that the position of athletic trainer was extracurricular so as to require a separate contract of employment. ***Cruciotti v. McNeel***, 396 S.E.2d 191 (W. Va. 1990).

Intradistrict Transfers

Two tenured teachers, sisters, each with thirty years of experience were transferred within the school system. The reason for the transfers was the high failure rates of the teachers. The superintendent had spoken to the teachers about their failure rates but his observations had gone unheeded. The new positions did not require them to grade their students. The teachers sued claiming their moves were arbitrary and capricious. The court held teacher employment is not to a particular position or school.

The teachers were in no way harmed by the move. ***Board of Educ. of Ashland v. Jayne***, 812 S.W.2d 129 (Ky. 1991).

A teacher filed a grievance alleging that she was transferred in retaliation for the appeal of her annual performance evaluation. The court held that the statute addressing grievances specifically excluded transfers and assignments within the school division and that the teacher's complaint did not constitute a grievance as defined by the code. ***Tazewell County School Bd. v. Gillenwater***, 400 S.E.2d 199 (Va. 1991).

A teacher was involuntarily transferred from a high school to a middle school. The court upheld the State Tenure Commission's reversal of the transfer. The commission had concluded the transfer was arbitrarily unjust. ***Alabama State Tenure Comm'n v. Dallas County Bd. of Educ.***, 569 So. 2d 742 (Ala. Civ. App. 1990).

A teacher involuntarily transferred to another school when his wife was appointed principal of the school. The court held the board policy prohibiting one spouse from supervising the other within the school system was a reasonable exercise of supervisory authority to prevent favoritism and conflict of interest. ***Townshend v. Board of Educ. of the County of Grant***, 396 S.E.2d 185 (W. Va. 1990).

Demotion or Reassignment of Duties

A teacher sued for lost wages when he was relieved of his duties as coordinator of vocational education. The statutory requirement of notice stating specific reasons for the reduction was not met by the school system when the reason for the change given was a desire to incorporate the duties into a central office position but where the actual reason was numerous complaints about the coordinator among the vocational staff. The school system was ordered to reinstate and pay the teacher the lost wages. ***Board of Educ. of McCreary County v. Williams***, 806 S.W.2d 649 (Ky. Ct. App. 1991)

A teacher employed as an instructional coordinator was struck by a school van and sustained a concussion. As a result of the injury, the teacher began having "epileptic-like" seizures, blacking out and loosing control of her body. The superintendent suspended the teacher without pay on the basis that her medical condition incapacitated her, making it impossible for her to perform her job safely. Following a hearing the board upheld her removal but directed she be reassigned to a comparable nonteaching position. The state appellate court held that the teacher was not handicapped under state statute and her reassignment had not been an unlawful employment practice. ***Umphries v. Jones***, 804 S.W.2d 38 (Mo. Ct. App. 1991).

An elementary principal's reassignment to a position of assistant junior high school unfavorably affected his job title, salary schedule and ability to obtain multiyear contracts. The court found that the principal's due process rights had been violated and ordered the appointment of a hearing examiner to conduct a formal hearing in accordance with the state statute. ***French v. School Bd. of Polk County***, 568 So. 2d 497 (Fla. Dist. Ct. App. 1990).

Petitioner was serving as an acting principal. He continued to serve in his position during a one-year probationary period. He was then notified that he would not be recommended for tenure as a principal because he had failed to submit a previously requested incident report. He was then reassigned but continued to receive his salary as a principal. Subsequently, he was reduced to his former position as an assistant principal, which he had held seven years prior to his promotion to acting principal. He sued for reinstatement as a principal and back pay. The court reinstated his position and granted him back pay. ***Orellanes v. Board of Educ.***, 561 N.Y.S.2d 242 (App. Div. 1990).

A principal was demoted to a certificated teaching position. The superintendent in his notice to the principal pointed out that she had not demonstrated the requisite skills and abilities necessary to be a successful elementary principal. The principal was given a hearing before the board. The court held that the transfer of a nontenured principal was a discretionary decision and that principals had no statutory right to a probationary period. ***Odegaard v. Everett School Dist. No. 2***, 797 P.2d 1152 (Wash. 1990).

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TERMINATION OF EMPLOYMENT

TWELFTH Series, Number 2
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Nonrenewal

If a constitutional right is implicated in the nonrenewal of a teacher, the teacher must show that the protected conduct was a substantial or motivating factor in the nonrenewal decision made by the board of education. ***Mt. Healthy City School Dist. Bd. of Educ. v. Doyle***, 429 U.S. 274 (1977).

By not renewing a tenured teacher's teaching contract upon the resignation of the teacher from supplemental coaching duties, a board of education failed to conform with nonrenewal and due process requirements. The teacher was entitled to reinstatement and back pay. ***Hachiya v. Board of Educ., Unified School Dist. No. 307***, 750 P.2d 383 (Kan. 1988).

The nonrenewal of a teacher's contract was justified based on evidence that the teacher had not completed the necessary course work during a five year period to meet renewal qualifications. The completion of the course work during the summer preceding the sixth year did not qualify the teacher for renewal. ***Feldhusen v. Beach Pub. School Dist. No.*** 3, 423 N.W.2d 155 (N.D. 1988).

Under Nebraska law, the action of a school board in deciding not to renew the teaching contract of a probationary teacher must be approved by a majority of the board quorum present and voting, not a majority of all members of the school board. ***Jeter v. Board of Educ. of the School Dist. of Fremont, County of Dodge***, 435 N.W.2d 170 (Neb. 1989).

A nontenured teacher's "acceptance" of employment is ineffective if no statutory offer of employment from a school board is made. ***Provoda v. Maxwell***, 808 P.2d 28 (N.M. 1991).

The employment of a probationary teacher can be terminated without a hearing and without specific reasons being stated. ***Blum v. Quinones***, 526 N.Y.S.2d 611 (App. Div. 1988).

A board of education did not act arbitrarily and capriciously when it refused to renew the teaching contract of a probationary teacher because the services of the teacher as a coach were no longer required. The action of the school board was justified in allowing the new head football coach flexibility in assembling a staff. ***Abell v. Nash County Bd. of Educ.***, 365 S.E.2d 706 (N.C. Ct. App. 1988).

The nonrenewal of a probationary teacher, even for budgetary purposes, is well within the legitimate scope of a school board's managerial discretion. "Staff reductions" policy applies only when a teacher is deprived of contractual expectations and benefits as a result of unusual circumstances placing financial limitations on a board of education. ***Jackson v. Randolph County Bd. of Educ.***, 565 So. 2d 641 (Ala. Civ. App. 1990).

Discussions among school board members in a closed session regarding the nonrenewal of a probationary teacher did not violate Illinois statutory requirements. ***Verticchio v. Divernon Community Unit School Dist. No. 13***, 555 N.E.2d 738 (Ill. App. Ct. 1990).

Under Missouri law, a principal with less than two years of service in a school district does not acquire the status of a permanent teacher. Thus, a school board is not required to prove that a principal's violation of the school district's corporal punishment policies was "willful" or "persistent" to terminate the employment of the principal. ***Hudson v. Wellston School Dist.***, 796 S.W.2d 31 (Mo. Ct. App. 1990).

Missouri statutory provisions for teacher evaluation do not require that the evaluation be considered or followed in the contract renewal of a probationary teacher. There are no provisions which mandate that a termination decision be based solely upon a principal's evaluation of a probationary high school teacher. ***Berhorst v. Maries County R-II School Dist.***, 805 S.W.2d 696 (Mo. Ct. App. 1991).

Notice

Under Ohio law, the use of certified mail as a method of effectuating notice for the nonrenewal of a teacher is only effective at the time it is received. A teacher who picked up a letter of nonrenewal at the post office on May 2, after the statutory deadline for notice, was found to be not intentionally avoiding notice and thus entitled to a continuing contract. ***Francu v. Windham Exempted Village School Dist.***, 496 N.E.2d 902 (Ohio 1986).

Under Arizona statutory requirements, a preliminary notice regarding a school board's intention not to reemploy must be provided to a probationary teacher if the primary reason for nonrenewal is inadequacy of classroom performance. A probationary teacher is entitled to a ninety day period to correct any and all inadequacies. ***Wheeler v. Yuma School Dist. No. One of Yuma County***, 750 P.2d 860 (Ariz. 1988).

When a teacher does not receive a notice of nonrenewal by May 1, the teacher's contract is automatically renewed for the following year under Arkansas law. A teacher's contract status and the statutory obligations in lieu of that status are binding on a school district formed by the merger of the teacher's school district and another school district. ***Hilton v. Pine Bluff Pub. Schools***, 748 S.W.2d 648 (Ark. 1988).

A probationary teacher nonrenewed due to reduction in force must be provided a notice of nonrenewal that supplies data sufficient for the teacher to prepare a defense and show any error that might exist. The notice must advise the teacher of the basis of the reduction and the basis on which the teacher's contract was selected for nonrenewal. ***Kennedy v. Board of Educ. of Ogallala School Dist.***, 430 N.W.2d 49 (Neb. 1988).

Under Alabama law, the placement of a nonrenewal notice in the pick-up box of a nontenured teacher on the last day of the school term was appropriate notice since the teacher was aware of and approved this procedure. Avoidance of receipt of the notice by the teacher under these conditions did not constitute grounds for reemployment. ***Ex parte Geneva City Bd. of Educ.***, 575 So. 2d 1114 (Ala. 1990).

The nonrenewal of a teacher by a school board may be arbitrary and capricious if a listing of charges does not specify simple and complete reasons for dismissal. A notice stating that a teacher's misconduct in four previous years indicated a "pattern of misconduct" did not contain specific reasons. ***Allen v. Texarkana Pub. Schools***, 794 S.W.2d 138 (Ark. 1990).

Written notice of nonrenewal to a nontenured teacher effectively terminates the contractual relationship even though a statement of reasons is not included in the notice. A school district is obligated to furnish a nontenured teacher a statement of reasons for nonrenewal in reasonable detail upon written request. ***Birgenheier v. Trustees, Yellowstone County School Dist. No. 2***, 791 P.2d 1388 (Mont. 1990).

A state regulation requiring a school board to give a teacher notice of termination before the end of the school year provides a means of remedy only for tenured teachers and is not applicable to nontenured teachers. Written notice of nonrenewal received on or before the last day of school meets requirements for the nonrenewal of a nontenured teacher. ***Provoda v. Maxwell***, 808 P.2d 28 (N.M. 1991).

Notification of nonrenewal of a nontenured teacher by a specific date is required only for a teacher who has been continuously employed by a board of education since the beginning of the school year. A teacher who resigns or has been terminated during the school year and then reemployed during the same school year is not continuously employed. ***Oates v. Coffee County Bd. of Educ.***, 400 S.E.2d 355 (Ga. Ct. App. 1990).

A notice of nonrenewal stating specific reasons, given by registered mail at least 60 days before the end of a probationary teacher's contract, is the only requirement to terminate a nontenured teacher under Illinois law. ***Verticchio v. Divernon Community Unit School Dist. No. 13***, 555 N.E.2d 738 (Ill. App. Ct. 1990).

Appeal

Alabama law requires that a teacher must provide a board of education with a written notice of his/her intention to contest the cancellation of his/her contract. Oral notification to the principal of the intent to contest the contract cancellation does not satisfy the statutory requirement. ***Ex parte Turner***, 523 So. 2d 403 (Ala. 1988).

A notice of appeal regarding the nonrenewal of a teacher given to a school board's counsel qualifies as notice given to the school board itself. ***Butler v. Board of Educ., Unified School Dist. No. 440, Harvey County***, 769 P.2d 651 (Kan. 1989).

A letter from a teacher to a superintendent questioning placement on a seniority list does not meet the Washington statutory requirement that a teacher file a written request for a hearing ten days after receipt of a notice of nonrenewal. An oral request for a hearing made during a meeting with the superintendent within the ten day period also falls short of the statutory requirement. ***Greene v. Pateros School Dist.***, 799 P.2d 276 (Wash. Ct. App. 1990).

Under Kentucky law, a school board must provide a nontenured teacher with "specific, detailed, and complete" grounds for contract nonrenewal if requested by the teacher. Mailing a copy of the minutes of a school board meeting to a teacher does not meet the statutory requirement. Failure by a school board to comply with the statutory requirement entitles a teacher to a contract of employment for the next school year. ***Gibson v. Board of Educ. of Jackson County***, 805 S.W.2d 673 (Ky. Ct. App. 1991).

Dismissal

The failure by a permanent teacher to return a signed contract within the time period designated by the board of education constituted a failure to accept employment. Such evidence was sufficient to sustain the board of education's decision to terminate the teacher. ***Niedbalski v. Board of Educ. of School Dist. No. 24***, 418 N.W.2d 565 (Neb. 1988).

Charges of insubordination, inefficiency, incompetency, and neglect of duty against a high school principal and proven by a preponderance of the evidence also may warrant the termination of that same

individual as a tenured teacher. The charges reflect adversely on a principal's ability to fulfill the roles required of a teacher and are therefore applicable to the statutory provisions of cause for the dismissal of a tenured teacher. ***Cooper v. Williamson County Bd. of Educ.***, 803 S.W.2d 200 (Tenn. 1990).

The dismissal of a tenured teacher on grounds of immorality, incompetency, and insubordination is not precluded by a state statute barring termination by virtue of a temporary disability if evidence indicates that the teacher's personality disorder was long-standing and had only recently improved. ***Beechwood v. Board of Educ. of School Dist. No. 11, County of El Paso***, 767 P.2d 1234 (Colo. Ct. App. 1988).

Under Alabama law, a decision by the State Teacher Tenure Commission reversing a school board's decision to terminate a tenured teacher may not be overturned unless overwhelming weight of the evidence dictates otherwise. ***Alabama State Tenure Comm'n v. Birmingham Bd. of Educ.***, 564 So. 2d 980 (Ala. Civ. App. 1990).

The retention of tenure rights is not statutorily guaranteed when a tenured teacher resigns and is reemployed during the same school year by the same school district. ***Oates v. Coffee County Bd. of Educ.***, 400 S.E.2d 355 (Ga. Ct. App. 1990).

A teacher with a disability must show that he/she is a member of protected class, and that the disability was a factor in the dismissal decision. ***Beck v. James***, 793 S.W.2d 416 (Mo. Ct. App. 1990).

Under Texas law, a probationary or tenured teacher must pass the required teacher's examination to maintain certification. Failure to pass the examination is valid grounds for termination. A letter to a teacher from a board of education explaining the grounds for termination and indicating hearing rights meets due process requirements. ***Swanson v. Houston Indep. School Dist.***, 800 S.W.2d 630 (Tex. Ct. App. 1990).

The dismissal of a tenured teacher may be reversed if the conduct of the teacher is judged to be remediable and the school board has not given the required statutory warning to the teacher. Evidence of irremediability must show that the conduct caused significant damage to the school. A warning from the school board is particularly appropriate before dismissal of a tenured teacher when the board is taking a new position on relatively widespread conduct which it previously had tacitly approved. ***Hegener v. Board of Educ. of City of Chicago***, 567 N.E.2d 566 (Ill. App. Ct. 1991).

Immorality

The termination of a tenured teacher on grounds of immoral conduct was supported by evidence that the teacher smoked marijuana with two students off school grounds. The charges were justified as immoral conduct in that the conduct had some nexus to the teacher's occupation. ***Board of Educ. of Hopkins County v. Wood***, 717 S.W.2d 837 (Ky. 1986).

Substantial evidence indicating that a teacher wrote letters or notes to female students and lied to his immediate supervisor supported the dismissal of the teacher on grounds of immorality. Immoral conduct may include lying. ***Dohanic v. Commonwealth Dep't of Educ.***, 533 A.2d 812 (Pa. Commw. Ct. 1987), *appeal denied*, 541 A.2d 1392 (Pa. 1988).

Engaging in sexual contact with a student warranted the discharge of a teacher. ***Strain v. Rapid City School Bd.***, 447 N.W.2d 332 (S.D. 1989).

A finding that a tenured teacher tampered with a school telephone system for the purpose of eavesdropping supported statutory grounds of "moral misconduct" and "due and sufficient" cause for termination. ***Rado v. Board of Educ. of the Borough of Naugatuck***, 583 A.2d 102 (Conn. 1990).

The dismissal of a teacher on grounds of immorality was substantiated by evidence that the teacher had written love letters to two students and spoke to one of the students professing love. ***Manheim Cent. Educ. Ass'n v. Manheim Cent. School Dist.***, 572 A.2d 31 (Pa. Commw. Ct. 1990), *appeal denied*, 582 A.2d 326 (1990).

A tenured teacher's actions of fondling third grade female students constituted irremediable conduct and substantiated termination on grounds of immorality. ***Fadler v. Illinois State Bd. of Educ.***, 506 N.E.2d 640 (Ill. App. Ct. 1987).

The single utterance of an obscene remark by a teacher in a fifth grade classroom substantiated termination of the teacher's indefinite contract on grounds of immorality. ***Fiscus v. Board of School Trustees of Cent. School Dist.***, 509 N.E.2d 1137 (Ind. Ct. App. 1987).

The improper touching of female elementary students warranted the discharge of a tenured teacher. No written warning was required because such conduct was considered irremediable. ***Board of Educ. of City of Chicago v. Box***, 547 N.E.2d 627 (Ill. App. Ct. 1989).

The conduct of a tenured teacher in transporting two female students to his home and permitting them to become intoxicated by drinking liquor was judged to be irremediable. Thus, no written warn-

ing was required before the initiation of dismissal action. The focus in such a case is not whether the conduct itself could have been corrected by a warning, but whether the effects of the conduct could have been corrected. ***Massie v. East St. Louis School Dist.***, 561 N.E.2d 246 (Ill. App. Ct. 1990).

The testimony of a former student alleging that she had a sexual relationship with a teacher beginning in her senior year and continuing after graduation was substantial evidence supporting a board of education's decision to immediately terminate the teacher. ***In re Etienne***, 460 N.W.2d 109 (Minn. Ct. App. 1990).

An attempted seduction of a student supported the termination of a teacher on grounds of immoral conduct. Such conduct was deemed to be irremediable and to affect materially and substantially the performance of the teacher thus providing sufficient cause to warrant dismissal. ***Sauter v. Mt. Vernon School Dist. No. 320***, 791 P.2d 549 (Wash Ct. App. 1990).

Insubordination

The dismissal of a teacher for insubordination was supported by evidence showing that the teacher refused to obey a directive from the superintendent to cease and desist from residing with a sixteen year-old former student who had left home with the assistance of the teacher and against the objections of his mother. ***Weaver v. Board of Educ. of Pine Plains Cent. School Dist.***, 514 N.Y.S.2d 473 (N.Y. App. Div. 1987), *appeal denied*, 519 N.Y.S.2d 1031 (N.Y. 1987).

A charge of insubordination as grounds for the dismissal of a tenured teacher was sustained by evidence that the teacher used profanity in dealing with students after being specifically ordered not to do so by the superintendent. Insubordination may be established by a teacher's single act of willful disobedience of a reasonable order and does not require a constant or persistent pattern of conduct. ***Ware v. Morgan County School Dist. No. RE-3***, 748 P.2d 1295 (Colo. 1988).

The dismissal of a teacher on grounds of insubordination was not supported by the failure of the teacher to return to work, as ordered by the superintendent, due to stress, fear, and intimidation resulting from events in the school. ***McGhee v. Miller***, 753 S.W.2d 354 (Tenn. 1988).

The dismissal of a teacher on grounds of insubordination was sustained by the teacher's refusal to attend PTA and faculty meetings, regardless of whether the teacher's attendance at the meetings was required. The teacher's continuing course of infractions, including the failure to return a student's report card and permanent record card as ordered by the principal, also supported dismissal. ***Meckley v. Kanawha County Bd. of Educ.***, 383 S.E.2d 839 (W. Va. 1989).

Grounds of insubordination in the dismissal of a tenured teacher were sustained by evidence that the teacher refused to take part in hall duty as ordered by the principal. ***Lockhart v. Board of Educ. of Arapahoe County School Dist. No. 6***, 735 P.2d 913 (Colo. Ct. App. 1986).

The dismissal of a nonprobationary teacher on grounds of insubordination was upheld by evidence indicating that during a faculty meeting the teacher shouted at supervisors, called them liars, and walked out. ***Caldwell v. Blytheville, Arkansas School Dist. No. Five***, 746 S.W.2d 381 (Ark. Ct. App. 1988).

The dismissal of a tenured teacher on grounds of insubordination was warranted by substantial evidence showing that the teacher engaged in a confrontation with the principal in front of students. ***Kleinberg v. Board of Educ. of the Albuquerque Pub. Schools***, 751 P.2d 722 (N.M. Ct. App. 1988).

Competent, material, and substantiated evidence existed to support the dismissal of a teacher for using corporal punishment against students in violation of a school district policy. According to the court, corporal punishment includes slapping, kicking, and/or punching a student. ***Tomczik v. State Tenure Comm'n***, 438 N.W.2d 642 (Mich. Ct. App. 1989).

The repeated failure to follow official directives regarding the use of corporal punishment justified the termination of a teacher. A school district policy requiring that corporal punishment be administered in a "reasonable manner" was not too vague to preclude the teacher's ability to exercise professional judgment regarding the choice of discipline procedures. ***Burton v. Kirby***, 775 S.W.2d 834 (Tex. Ct. App. 1989).

The dismissal of a tenured teacher for insubordination was supported by evidence that the teacher called in sick after being denied a personal day to interview for another job. Insubordination can be one incident of willful or intentional disobedience showing that the teacher's conduct warranted dismissal. ***Gaylord v. Board of Educ., Unified School Dist. No. 218***, 794 P.2d 307 (Kan. Ct. App. 1990).

Insubordination charges leading to the dismissal of a tenured teacher were supported by substantial evidence that the teacher made no effort to comply with specific directives to improve his relationship with parents and students, supply worksheets

to students, and furnish materials to students used to supplement textbooks. ***In re Proposed Termination of James E. Johnson***, 451 N.W.2d 343 (Minn. Ct. App. 1990).

Incompetency

The dismissal of a tenured teacher on grounds of incompetency for failure to maintain discipline in the classroom was not unreasonable or arbitrary. ***Combs v. Board of Educ. of Avon Center School Dist. No. 47***, 498 N.E.2d 806 (Ill. App. Ct. 1986), *appeal denied*, 505 N.E.2d 351 (Ill. 1987).

The dismissal of a tenured teacher on grounds of incompetency and insubordination was justified by a preponderance of the evidence showing that the teacher could not maintain discipline, did not conduct structured lessons, gave lessons unrelated to the subject area, and failed to perform assigned duties properly. ***Saunders v. Anderson***, 746 S.W.2d 185 (Tenn. 1987).

A teacher, who had received satisfactory evaluations for thirteen years as a classroom teacher, was improperly dismissed for incompetence based on a poor performance in four interviews concerning the policy and curriculum of the school district. ***Trustees, Missoula County School Dist. No. 1 v. Anderson***, 757 P.2d 1315 (Mont. 1988).

Missouri law requires that a superintendent or a designated representative of the superintendent must meet and confer with a tenured teacher charged with incompetency to provide the teacher an opportunity to remedy any defects in teaching performance prior to termination. ***Iven v. Hazelwood School Dist.***, 710 S.W.2d 462 (Mo. Ct. App. 1986).

The dismissal of a teacher on grounds of incompetency was supported by evidence showing that the teacher was unable to maintain order in the classroom. Potential harm to students existed due to the teacher's inability to maintain order. ***Board of Educ. of School Dist. of Philadelphia v. Kushner***, 530 A.2d 541 (Pa. Commw. Ct. 1987).

The conduct of a tenured teacher, which was supported by evidence indicating that the teacher smoked in front of students in the classroom, made sexual remarks to female students, and made harassing phone calls to a female assistant principal, substantiated the dismissal of the teacher on grounds of incompetency. ***Bradshaw v. Alabama State Tenure Comm'n***, 520 So. 2d 541 (Ala. Civ. App. 1988).

Consistently negative evaluations of a tenured teacher's classroom performance supported the dismissal of the teacher on grounds of incompetency. The teacher's inability to comply with the requirements of the notices to remedy teaching deficiencies was substantiated by the negative evaluations. ***DeBernard v. State Bd. of Educ.***, 527 N.E.2d 616 (Ill. App. Ct. 1988).

The dismissal of a tenured teacher on grounds of incompetency was supported by evidentiary findings that indicated the teacher was unable to average grades and meet assigned job targets. The teacher showed no improvement during the ninety day period for remediation required by Missouri law. ***Atherton v. Board of Educ. of the School Dist. of St. Joseph***, 744 S.W.2d 518 (Mo. Ct. App. 1988).

A tenured teacher's termination for inefficiency was supported by substantial evidence indicating poor rapport with students, insufficient communication with parents, test scores indicating poor student progress, and many requests by students to transfer out of the teacher's classes. ***In re Proposed Termination of James E. Johnson***, 451 N.W.2d 343 (Minn. Ct. App. 1990).

Neglect of Duty

The dismissal of a tenured teacher on grounds of neglect of duty was supported by evidentiary findings that the teacher drank beer with cheerleaders. The teacher, as the head cheerleader sponsor, was presumed to have known the school district policy regarding alcohol consumption by students. ***Blaine v. Moffat County School Dist. RE No. 1***, 748 P.2d 1280 (Colo. 1988).

Failure to maintain students' cumulative files current for an accreditation review and to keep students in the classroom supported the dismissal of a tenured teacher on grounds of willful neglect of duty. ***Gaulden v. Lincoln Parish School Bd.***, 554 So. 2d 152 (La. Ct. App. 1989), *writ denied*, 559 So. 2d 126 (La. 1990).

A tenured teacher's failure to remove a student with a loaded gun from the classroom did not warrant dismissal on grounds of willful neglect of duty. The term "willful" imports a knowing and intentional act. The absence of a school district policy with regard to the circumstances precluded an estimation of willful neglect of duty. ***Board of Educ. of County of Gilmer v. Chaddock***, 398 S.E.2d 120 (W. Va. 1990).

A teacher's unintentional showing of an R-rated movie to two classes was negligent but did not warrant termination on grounds of willful neglect of duty. ***Terry v. Houston County Bd. of Educ.***, 342 S.E.2d 774 (Ga. Ct. App. 1986).

An incident of kicking a student warranted the dismissal of a permanent teacher on grounds of neglect of duty. ***Thomas v. Cascade Union High School Dist. No. 5***, 780 P.2d 780 (Or. Ct. App. 1989).

The dismissal of a teacher for reasons of "neglect of duty" was supported by evidence showing that the teacher was aware of the fact that her husband had been using their jointly owned home to grow and sell marijuana. "Duty" in question referred to the duty to preserve the integrity of her role as an anti-drug teacher. ***Jefferson County School Dist. No. 509-J v. Fair Dismissal Appeals Bd.***, 793 P.2d 888 (Or. Ct. App. 1990).

Unfitness to Teach

Support for the termination of a teacher on grounds of unfitness to teach may be reasonably inferred from the perpetration of a third-degree sexual assault on school premises, which is a clear departure from the moral behavior and professional standards required of the teacher. ***Stephens v. Board of Educ. of School Dist. No 5***, 429 N.W.2d 722 (Neb. 1988).

The dismissal of a tenured teacher on grounds of immorality and unfitness to teach was supported by evidence that the teacher had sexual contact with two students. ***Johnson v. Board of Trustees, Beaverhead County High School Dist.***, 771 P.2d 137 (Mont. 1989).

An elementary school teacher's dismissal was upheld on grounds of being unfit to teach based on evidence showing that the teacher maintained a sexual relationship with a high school student. ***Elvin v. City of Waterville***, 573 A.2d 381 (Me. 1990).

A school district had sufficient cause in discharging a teacher with a visual handicap and hearing impairment. Standards of sufficient cause apply to conditions where a teacher's deficiency is irremediable and materially and substantially affects the performance of the teacher. ***Clarke v. Shoreline School Dist. No. 412***, 720 P.2d 793 (Wash. 1986).

Unfitness to teach as grounds for the dismissal of a tenured teacher was supported by evidence showing that the teacher's directions to students were unclear, student participation was limited and not encouraged, students were unattentive and unmotivated, and the teacher exhibited low enthusiasm. ***Hagerty v. State Tenure Comm'n***, 445 N.W.2d 175 (Mich. Ct. App. 1989).

Unprofessional Conduct

A teacher who showed a controversial, highly suggestive, and somewhat sexually explicit movie to a group of high school students without first previewing it and without making any attempt to explain its educational value was justifiably dismissed on grounds of conduct unbecoming a teacher. ***Fowler v. Board of Educ. of Lincoln County, Kentucky***, 819 F.2d 657 (6th Cir. 1987), *cert. denied*, 484 U.S. 986 (1987).

The conviction and sentencing of a tenured teacher on a charge of criminally negligent homicide involving the death of a teenager provided substantial evidence to support dismissal charges of conduct unbecoming a teacher. ***Ellis v. Ambach***, 508 N.Y.S.2d 624 (N.Y. App. Div. 1986), *appeal denied*, 514 N.Y.S.2d 1023 (N.Y. 1987).

A tenured teacher's alleged acts of kicking a student in the leg and causing substantial pain did not support dismissal charges of misconduct under the "criminal misconduct" exception to the New York statutory requirement of a six-month statute of limitations on teacher disciplinary charges. A school district is responsible for proving that the alleged specific facts constitute criminal action under Penal Law. ***Aronsky v. Board of Educ., Community School Dist. No. 22 of the City of New York***, 556 N.E.2d 1074 (N.Y. 1990).

A teacher's encouragement of elementary students to hit and kick other students supported dismissal on grounds of unprofessional conduct and not on grounds of "inadequacy of classroom performance." Teaching ability, technique, and effectiveness are standards of "classroom performance." Actions that contribute to the physical abuse of children apply to standards of unprofessional conduct. ***Roberts v. Santa Cruz Valley Unified School Dist. No. 35***, 778 P.2d 1294 (Ariz. Ct. App. 1989).

Other Good and Just Cause

A school district had sufficient cause in discharging a teacher for striking students in their genitals. Since such conduct did not constitute a "remediable teaching deficiency," the teacher was not entitled to a remediation period. ***Mott v. Endicott School Dist. No. 308***, 713 P.2d 98 (Wash. 1986).

Evidence that an elementary teacher called students by crude names did not provide good cause for the dismissal of the teacher. ***Trustees of Lincoln County School Dist. No. 13 v. Holden***, 754 P.2d 506 (Mont. 1988).

Just cause as grounds for termination was supported by a preponderance of the evidence showing that a nonprobationary teacher failed to meet performance standards set by a school district for its teaching personnel. ***Wilson v. Des Moines Indep. School Dist.***, 389 N.W. 2d 681 (Iowa Ct. App. 1986).

Criminal conduct by a tenured teacher and its surrounding circumstances constitutes sufficient cause to warrant dismissal. Charges of criminal conduct are not considered to be remediable; therefore no written warning is required before dismissal action is initiated. ***McCullough v. Illinois State Bd. of Educ.***, 562 N.E.2d 1233 (Ill. App. Ct. 1990).

A teacher's course work deficiency is considered remediable and termination for such a reason requires a school board to provide the teacher with a written warning prior to initiating dismissal procedures. The fact that the course work deficiency existed for nine years does not render the deficiency irremediable. ***Morris v. Illinois State Bd. of Educ.***, 555 N.E.2d 725 (Ill. App. Ct. 1990).

Reduction in Force

Reduction in force policy allowed a tenured teacher to be terminated and a nontenured teacher to be retained as an alternative to realigning the staff in a manner which would seriously affect the educational program offered by a school district. The termination of the tenured teacher by the board of education under this circumstance was not arbitrary or capricious. ***New Mexico State Bd. of Educ. v. Abeyta***, 751 P.2d 685 (N.M. 1988).

Under Kansas law, a board of education is only required to consider the certification status of a teacher prior to April 10 in deciding whether to renew the teacher's contract. A board of education is not required to grant a tenured teacher additional time beyond April 10 to expand certification to qualify for continued employment. ***Butler v. Board of Educ., Unified School Dist. No. 440, Harvey County***, 769 P.2d 651 (Kan. 1989).

Under Wyoming law, a dismissed teacher assumes the burden of proving that the decision to terminate due to reduction in force is not supported by substantial evidence. ***Palmer v. Board of Trustees, Crook County School Dist. 1***, 785 P.2d 1160 (Wyo. 1990).

Property and Liberty Interests

The nonrenewal of a probationary teacher does not require procedural due process protection unless the impairment of a liberty or property interest can be shown. To establish an infringement of a liberty interest, a teacher must show that the nonrenewal action resulted in damage to his or her reputation, or imposed a stigma that precluded other employment opportunities. ***Board of Regents of State Colleges v. Roth***, 408 U.S. 564 (1972).

Informal or *de facto* tenure can be created through various policies and practices of the institution employing a teacher, thereby requiring procedural due process prior to contract termination. ***Perry v. Sindermann***, 408 U.S. 593 (1972).

A liberty interest is implicated if stigmatizing information concerning the discharge of a teacher is published. ***Rankin v. Independent School Dist. No. I-3, Noble County, Oklahoma***, 876 F.2d 838 (10th Cir. 1989), *cert. denied*, 111 S. Ct. 786 (1991).

A one-year temporary teaching certificate held by a substitute teacher does not establish a property interest with respect to continued employment. ***Hemmige v. Chicago Pub. Schools***, 786 F.2d 280 (7th Cir. 1986).

The liberty interests of a probationary teacher are not affected unless damaging reasons for nonrenewal are publicly communicated. A conversation in which a school board employee told the superintendent that the teacher had asked the employee's son to lie on the teacher's behalf did not constitute publicly communicated statements. ***Noel v. Andrus***, 810 F.2d 1388 (5th Cir. 1987).

Statements to the press by a school board member characterizing a superintendent who had been dismissed as "hostile" and "patronizing" did not implicate a liberty interest. Such public characterizations did not imply allegations of moral turpitude. ***Adams v. School Dist. No. 5 of Jackson County, Oregon***, 699 F. Supp. 243 (D. Or. 1988).

A liberty interest claim must be tied to a tangible interest such as employment. Thus, a liberty interest is not implicated when an individual's coaching contract is nonrenewed but he/she remains employed by the school district as a teacher. ***Diehl v. Albany County School Dist. No. 1***, 694 F. Supp. 1534 (D. Wyo. 1988).

In a nonrenewal, damage to reputation standing alone is insufficient to establish impairment of liberty interests unless the notice of nonrenewal explicitly states a stigmatizing factor or implicitly supports another stigmatizing allegation. ***Peterson v. Unified School Dist. No. 418***, 724 F. Supp. 829 (D. Kan. 1989).

The dismissal of a probationary principal for incompetence, inability to relate well with others, and

lack of tact did not implicate a liberty interest. No publicized charges of moral turpitude or dishonesty were made by the school district in dismissal proceedings, thus no liberty interest was implicated, and the dismissal was not subject to procedural due process requirements. ***Hayes v. Phoenix-Talent School Dist. No. 4***, 893 F.2d 235 (9th Cir. 1990).

In the absence of stigmatizing evidence, a liberty interest is not implicated in the termination of a probationary teacher. ***Blum v. Quinones***, 526 N.Y.S.2d 611 (App. Div. 1988).

An allegation by a nontenured teacher that his/her reputation has been damaged by an arbitrary and capricious dismissal by a board of education entitles the teacher to an opportunity to present evidence in a trial court to attempt to substantiate the claim. ***Harris v. Florence City Bd. of Educ.***, 568 So. 2d 827 (Ala. Civ. App. 1990).

Under Missouri law, a probationary teacher whose contract has been nonrenewed does not have a property right to continued employment. A property interest claim must be sustained by a "legitimate claim of entitlement" to continue the employment. ***Berhorst v. Maries County R-II School Dist.***, 805 S.W.2d 696 (Mo. Ct. App. 1991).

Due Process Requirements

Proceedings

An Oklahoma statute requiring a tenured teacher to remit half the cost of a dismissal hearing that legally must be provided by a board of education violates due process rights. ***Rankin v. Independent School Dist. No. I-3, Noble County, Oklahoma***, 876 F.2d 838 (10th Cir. 1989), *cert. denied*, 111 S. Ct. 786 (1991).

With regard to dismissal proceedings, a tenured teacher does not have to show "actual bias" on the part of a school board to indicate a violation of due process rights. A teacher must only show that a probability of unfairness was high based on the appearance of bias or partiality. ***Ferrario v. Board of Educ. of Escanaba Area Pub. Schools***, 395 N.W.2d 195 (Mich. 1986).

In dismissal proceedings reinstated after a school board's dismissal was reversed by a court due to a procedural defect, a board may rely on the same alleged acts of misconduct that had been relied on in the original proceedings. ***Board of Educ. of the Santa Fe Pub. Schools v. Sullivan***, 740 P.2d 119 (N.M. 1987).

The presence of a superintendent at an executive session of a school board to discuss employee termination does not violate due process requirements. ***O'Hair v. Board of Educ., Unified School Dist. No. 300, Comanche County***, 805 P.2d 40 (Kan. Ct. App. 1990).

Notice

Prior to and after termination, due process procedures require that a teacher be given notice of the names of accusers, the specific nature and factual basis for charges, and the right to cross-examine witnesses. ***Casada v. Booneville School Dist. No. 65***, 686 F. Supp. 730 (W.D. Ark. 1988).

West Virginia law requires that prior to the termination of a teacher's continuing contract, the teacher must receive written notice stating the cause or causes for termination and be afforded a reasonable opportunity to be heard before the board of education. A notice of termination received by a teacher one or two days before the hearing date set by the board of education was insufficient notice and deprived the teacher of the opportunity to prepare for the hearing. ***Farley v. Board of Educ. of County of Mingo***, 365 S.E.2d 816 (W. Va. 1988).

A notice that advises a teacher of the right to request a hearing prior to dismissal must include instructions on where a request for such a hearing is to be filed. ***Duruttya v. Board of Educ. of County of Mingo***, 382 S.E.2d 40 (W. Va. 1989).

A letter to a permanent teacher warning of possible termination met Missouri statutory requirements in that the letter provided exact complaints against the teacher and afforded the teacher an opportunity to remedy the situation. ***Cozad v. Crane School Dist. R-3***, 716 S.W.2d 408 (Mo. Ct. App. 1986).

Charges of "competency lacking in quality of performance" and "competency lacking in general responsibility" stated in a letter to a tenured teacher did not satisfy the Missouri statutory requirement that formal charges specify with particularity the grounds alleged to exist for dismissal. A tenured teacher must be provided with exact complaints and the opportunity to remedy the situation. ***Iven v. Hazelwood School Dist.***, 710 S.W.2d 462 (Mo. Ct. App. 1986).

Under Missouri law, a permanent teacher's appeal of a school board's termination notice must be filed within a fifteen day period after receipt of the notice. ***Dorf v. Consolidated School Dist. No. 4***, 739 S.W.2d 751 (Mo. Ct. App. 1987).

A written notice of charges received by a teacher with an indefinite contract complied with Missouri statutory requirements that such notice should specify with particularity the grounds upon which dismissal is sought. The notice indicated to the teacher that the deficiencies outlined in a previous evaluation, which was attached, had not been remedied and specifically informed the teacher that those deficiencies would be submitted as charges to the board of education. ***Adkins v. Hazelwood School Dist.***, 743 S.W.2d 869 (Mo. Ct. App. 1987).

A dismissal notice given to a tenured teacher must include a detailed statement of reasons supporting the decision of the board of education. The stated reasons of incompetency, neglect of duty, and other good and just cause are not sufficiently detailed to comply with Alabama statutory requirements. ***Gardner v. Alabama State Tenure Comm'n***, 553 So. 2d 606 (Ala. Civ. App. 1989).

A statement of reasons supporting the termination of a tenured teacher on grounds of incompetence and insufficiency was not sufficiently specific. Allegations of lack of organization and failure to provide activities and to solicit help for the remediation and enrichment of students lacked the specificity required for the teacher to rebut the charges. ***Jefferson Consol. School Dist. C-123 v. Carden***, 772 S.W.2d 753 (Mo. Ct. App. 1989).

Written warning must be given to remove a tenured teacher unless the weight of the evidence shows that damage to students, faculty, or school could not have been corrected by notice. ***Board of Educ. of City of Chicago v. Johnson***, 570 N.E.2d 382 (Ill. App. Ct. 1991).

Hearing

A board of education is the proper administrative agency of review to conduct the dismissal hearing of a teacher. A presumption of honesty and integrity exists with regard to the actions of a board of education involved in a dismissal hearing. ***Hortonville Joint School Dist. No. 1 v. Hortonville Educ. Ass'n***, 426 U.S. 482 (1976).

An initial or pretermination hearing is required in teacher dismissal proceedings to establish that the charges are reasonable and support the dismissal. A teacher is entitled to a notice of the charges, evidence of the charges, and an opportunity to respond, orally or in writing, as to why the dismissal action should not occur. ***Cleveland Bd. of Educ. v. Loudermill***, 470 U.S. 532 (1985).

A tenured teacher must be afforded a pretermination hearing before the termination of an employment contract. Remedies taking place after termination, regardless of how elaborate or extensive they might be, are insufficient to meet constitutional due process requirements. ***Short v. Kiamichi Area Vocational-Technical School Dist. No. 7 of Choctaw County***, 761 P.2d 472 (Okla. 1988), *cert. denied*, 489 U.S. 1066 (1989).

Due process procedures regarding a dismissal hearing require that employees have the opportunity to present their side of the story. ***Adams v. School Dist. No. 5 of Jackson County, Oregon***, 699 F. Supp. 243 (D. Or. 1988).

Due process requirements concerning termination procedures are met if an initial hearing is provided. Due process does not require a succession of different pretermination hearings commensurate with various positions an employee might have held during the term of employment. ***Fields v. Durham***, 909 F.2d 94 (4th Cir. 1990).

The due process rights of a discharged tenured teacher to a fair and impartial hearing were denied by evidence showing bias of school board members. Strong statements by school board members indicating that the hearing would not affect their decision to dismiss the teacher supported allegations of bias. ***Ex parte Conecuh County Bd. of Educ.***, 495 So. 2d 1108 (Ala. 1986).

The violation of due process rights with regard to a fair and impartial hearing requires evidence that the preformed opinions of school board members were fixed and unchangeable. Statements made by school board members as to policy issues related to the dispute do not constitute actual bias. ***Kizer v. Dorchester County Vocational Educ. Bd. of Trustees***, 340 S.E.2d 144 (S.C. 1986).

The decision by a board of education to terminate a teacher's contract cannot be made prior to an evidential pretermination hearing. ***Heithoff v. Nebraska State Bd. of Educ.***, 430 N.W.2d 681 (Neb. 1988).

A teacher faced with the loss of tenured employment must have the opportunity to confront witnesses during an administrative hearing. A teacher separated from witnesses who might be threatened by the teacher's demeanor must be afforded an opportunity for direct communication with counsel during the testimony of such witnesses. ***In re Wolf***, 555 A.2d 722 (N.J. Super. Ct. App. Div. 1989), *cert. denied*, 564 A.2d 862 (N.J. 1989).

A review by a school board of a sheriff's investigative file regarding allegations that a teacher engaged in improper sexual conduct with a student did not create an unacceptable risk of actual bias, depriving the teacher of the right to a fair hearing.

The burden of proving actual bias was the responsibility of the teacher. ***Strain v. Rapid City School Bd.***, 447 N.W.2d 332 (S.D. 1989).

The due process rights of a tenured teacher were not violated by the failure to swear witnesses at a dismissal hearing. ***Gaulden v. Lincoln Parish School Bd.***, 554 So. 2d 152 (La. Ct. App. 1989), *writ denied*, 559 So. 2d 126 (La. 1990).

Due process rights were not violated when a board of education considered an affidavit prepared for a disciplinary hearing by a high school student with whom a teacher had a sexual relationship. The teacher's claim that she could not confront and cross-examine the student was rejected based on the existence of the affidavit as corroborating evidence introduced from other sources including the teacher's own testimony. ***Elvin v. City of Waterville***, 573 A.2d 381 (Me. 1990).

The hearing officer at a pretermination hearing is not a "decision-maker" in that judgment of the charges is made by the school board alone. Thus, procedural due process was not denied to a teacher accused of misconduct when the attorney presiding as a hearing officer before the board of education was a member of the same law firm as the attorney representing the superintendent. ***Plymouth-Canton Community Schools v. State Tenure Comm'n***, 457 N.W.2d 656 (Mich. 1990).

A tenured teacher dismissed due to reduction in force brought about by budgetary constraints must be afforded a pretermination hearing by the board of education. ***Harris v. Trustees, Cascades County School Dist.***, 786 P.2d 1164 (Mont. 1990).

Under West Virginia law, a hearing before the state Grievance Board negates the necessity for a hearing before the board of education. ***Fayette County Bd. of Educ. v. Lilly***, 403 S.E.2d 431 (W. Va. 1991).

A teacher was denied a fair termination hearing and due process when the attorney representing the school board acted as both prosecutor, representing the interests of the board, and as the school board's legal advisor, which included giving legal advice at the final meeting of the school board to consider dismissal. ***McIntyre v. Tucker***, 490 So. 2d 1012 (Fla. Dist. Ct. App. 1986).

In the dismissal of a teacher, the right to an impartial hearing is not violated unless there is evidence of actual bias or partiality by a school board. The mere conjunction of investigative and adjudicative functions by the board of education is not sufficient to sustain a claim of actual bias or partiality. ***Rouse v. Scottsdale Unified School Dist. No. 48***, 732 P.2d 22 (Ariz. Ct. App. 1987).

A teacher, dismissed for incompetency, was entitled to a new hearing because of procedural impropriety on behalf of the hearing officer. The appearance of neutrality standard for a hearing officer in dismissal proceedings was violated when the hearing officer ate lunch with the counsel for the school board and the witness who was testifying before the lunch recess. ***Wells v. Del Norte School Dist. C-7***, 733 P.2d 770, 772 (Colo. Ct. App. 1987).

Due process was not impaired in the dismissal of a tenured teacher by the fact that the attorney appointed by the school board to act as a hearing officer was a member of the same firm as the attorney representing the school district. The court did not find bias in this case but alerted the state bar association that if a similar situation occurs in the future, a per se rule of reversal would be adopted because of the potential for prejudice. ***Hagerty v. State Tenure Comm'n***, 445 N.W.2d 178 (Mich. Ct. App. 1989).

The due process rights of a terminated teacher may be violated if there is evidence of impermissible bias on the part of a school board in connection with the dismissal proceedings. A school board's prehearing involvement in the matter giving rise to the dismissal hearing in conjunction with denials of such involvement during the hearing substantiated impermissible bias. ***Crump v. Board of Educ. of Hickory Admin. School Unit***, 378 S.E.2d 32 (N.C. Ct. App. 1989).

The right to a private conference with a board of education before a decision is made on the renewal of a probationary teacher's contract may not meet Wisconsin statutory requirements if there is evidence that the conference was a "sham." The participation of an allegedly biased board member in a private conference entitles a teacher to a trial regarding the claim for reinstatement. ***Harkness v. Palmyra-Eagle School Dist.***, 460 N.W.2d 769 (Wis. Ct. App. 1990).

A teacher's right to confront and cross-examine a particular witness during an administrative hearing is not violated if the teacher does not request the appearance of that witness at the hearing. ***Hinkle v. Garrett-Keyser-Butler School Dist.***, 567 N.E.2d 1173 (Ind. Ct. App. 1991).

Evidence

The proper standard of proof required in tenured teacher termination proceedings is the preponderance of evidence standard even when there are allegations involving violations of criminal law. ***Board of Educ. of City of Chicago v. State Bd. of Educ.***, 497 N.E.2d 984 (Ill. 1986).

Preponderance of the evidence, not substantial evidence, is required as the standard of proof in the dismissal of a tenured teacher. ***Martin v. Ambach***, 502 N.Y.S.2d 991 (N.Y. 1986).

Hearsay evidence that is supported by other evidence may be admitted in dismissal proceedings before a board of education. Hearsay evidence was admissible when a teacher's own testimony supported the hearsay testimony. ***Dohanic v. Commonwealth Dep't of Educ.***, 533 A.2d 812 (Pa. Commw. Ct. 1987), *appeal denied*, 541 A.2d 1392 (Pa. 1988).

Contingent findings of evidence made by an impartial hearing panel may be relied upon by a school board to support its decision to terminate a tenured teacher. ***Rado v. Board of Educ. of the Borough of Naugatuck***, 583 A.2d 102 (Conn. 1990).

Hearsay evidence, if admitted, cannot be the sole basis for a decision by a board of education to terminate a teaching contract. Evidence presented at a hearing by witnesses with personal knowledge of the projected number of special education students for the next school year did not constitute hearsay evidence, and thus the decision of the school board could be based solely on such evidence. ***Stone County School Bd. v. McMaster***, 573 So. 2d 753 (Miss. 1990).

Substantial credible evidence is required to support the termination of a tenured teacher for reasons of unfitness and incompetence. ***Harris v. Bailey***, 798 P.2d 96 (Mont. 1990).

A school board could consider a teacher's acts in previous school years when determining whether the teacher should be terminated for using corporal punishment in violation of a school district policy. ***Tomczik v. State Tenure Comm'n***, 438 N.W.2d 642 (Mich. Ct. App. 1989).

In cases of teacher termination on the grounds of misconduct in office and gross insubordination, preponderance of the evidence, rather than clear and convincing evidence, is the quantum proof necessary to support a teacher's dismissal. Clear and convincing evidence, however, is required under Florida law in cases of teacher license revocation. ***Dileo v. School Bd. of Dade County***, 569 So. 2d 883 (Fla. Dist. Ct. App. 1990).

Based on the existence of substantial evidence, a board of education may reject the findings of an independent hearing officer and terminate a teacher. ***In re Etienne***, 460 N.W.2d 109 (Minn. Ct. App. 1990).

The termination of a tenured teacher for incompetency and inefficiency is supported by competent and substantial evidence in the record as a whole, even without evidence of actual harm to students. ***Beck v. James***, 793 S.W.2d 416 (Mo. Ct. App. 1990).

A board of education may terminate a teacher when the specific incident involving charges of misconduct in office and gross insubordination is supported by competent and substantial evidence that the teacher had been duly warned to refrain from such conduct. If valid reasons exist in the record, it is inappropriate for the courts to substitute their judgment for a board of education's determination of cause. ***Johnson v. School Bd. of Dade County***, 578 So. 2d 387 (Fla. Dist. Ct. App. 1991).

Under Illinois law, the dismissal of a tenured teacher without notice requires that cause be irremediable. A board of education assumes the burden of proving, by a preponderance of the evidence, irremediability at the hearing before the State Board of Education. ***Board of Educ. of City of Chicago v. Johnson***, 570 N.E.2d 382 (Ill. App. Ct. 1991).

Hearsay evidence may be used in the termination of a teacher's indefinite contract if the hearsay evidence is admitted into an administrative hearing without objection. Consideration of hearsay evidence by a school board during an administrative hearing concerning the cancellation of a teacher's indefinite contract does not constitute the denial of a full and impartial hearing. ***Hinkle v. Garrett-Keyser-Butler School Dist.***, 567 N.E.2d 1173 (Ind. Ct. App. 1991).

Findings of Fact

Arkansas law does not require a school board to make specific findings of fact with regard to the dismissal of a teacher. Only specific written conclusions concerning the verity of the reasons for dismissal must be provided. ***Caldwell v. Blytheville, Arkansas School Dist. No. Five***, 746 S.W.2d 381 (Ark. Ct. App. 1988).

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STAFF EVALUATION

TWELFTH Series, Number 3

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Elementary & Secondary Education

Administrators

Due Process

A nontenured principal who was demoted to a certificated teaching position brought suit against the district. The court held that school district procedures requiring administrators to be evaluated during the school year and requiring an evaluation to be made on or before January 15 if the evaluator contemplates placing the administrator on probation do not apply to demotion of nontenured principal, for which no probable cause is required. Transfer of a nontenured school principal was held to be discretionary and did not need to be preceded by formal evaluation procedures. ***Odegaard v. Everett School Dist. No. 2***, 797 P.2d 1152 (Wash. 1990).

A principal was employed under a two-year contract which was not renewed when it expired. He brought action alleging deprivation of property without due process. At issue was whether the Texas Term Contract Nonrenewal Act created a property interest in employment beyond the contract term for Texas teachers employed under term contracts. The Act provided procedural safeguards to employees whose contracts were not renewed. It required periodic evaluation and that these evaluations be considered by a board of trustees before making final contract renewal decisions. ***English v. Hairston***, 888 F.2d 1069 (5th Cir. 1989).

A school principal closely connected with the evaluation of a tenured teacher suddenly denied any knowledge of approximately thirty observations he conducted of that teacher. This denial occurred three days before the teacher's hearing; the principal claimed his notes did not refresh his memory. The charges against the teacher had to be dropped. The principal was then given a hearing and suspended for twenty-four school days. ***Stutzman v. Board of Educ. of Chicago***, 525 N.E.2d 903 (Ill. App. Ct. 1988).

First Amendment

Assistant principal Griffin filed a grievance with the Chicago Teachers' Union when her evaluation rating was lowered from "superior" to "excellent." Griffin's direct supervisor, the school principal, was compelled to restore her superior rating, but he then reassigned her to a teaching position. She filed a first amendment claim, but the case was dismissed when the court found that filing a union grievance could not establish a first amendment claim because the action was not a matter of public concern. ***Griffin v. Thomas***, 724 F. Supp. 587 (N.D. Ill. 1989).

Evaluation Procedures

A principal, reassigned as a classroom teacher, asserted that the board wrongfully released her on the basis of incompetency without conducting an evaluation as required by state code. The board's reasons did not include incompetency, but focused on the need for a different administrative leadership style. The court ruled that the teacher had not met the burden of showing clearly that incompetency was among the reasons for her reassignment; therefore she was not entitled to evaluation before reassignment. ***Quirk v. Board of Educ. of Moorpark Unified School Dist.***, 244 Cal. Rptr. 924 (Cal. Ct. App. 1988).

When a nontenured administrative assistant was dismissed, he sought reinstatement and tenure, charging deficiencies in notice about his performance problems. The notice of dismissal was found to be sufficient. As a reason it gave "your inability to adequately supervise employees under your control." The employee had been notified of specific problems on several occasions. ***Howard v. Board of Educ. of Freeport School Dist. No. 145***, 513 N.E.2d 545 (Ill. App. Ct. 1987).

Teachers

Discrimination

A nontenured African-American high school teacher was one of four teachers (the other three were white) whose contract was not renewed. She had received negative evaluations during the year by the African-American high school principal. She challenged her nonrenewal, claiming that the decision was a pretext for discrimination. The court held that she failed to offer any evidence establishing her claim. ***Sommerville v. Tuscaloosa City Bd. of Educ.***, 579 So. 2d 628 (Ala. Civ. App. 1991).

A teacher was dismissed for incompetency one year short of the thirty years necessary to draw full pension. A psychologist diagnosed her serious problems with punctuation, grammar, and spelling (she misspelled not only students' names but her own) as a learning disability. She filed a handicapped discrimination suit. The appellate court ruled in favor of the school district, in part because the psychologist's test was questioned and in part because in 1987, the teacher received the worst evaluation in the school while in 1988 her evaluation cited deficiencies to be remedied as instructional methods, communication, and classroom management. A

three-month remediation period with assistance from the principal failed to bring improvement. ***Beck v. James***, 793 S.W.2d 416 (Mo. Ct. App. 1990).

A female applicant for a position was unable to prove sex discrimination when she failed to receive a promotion. She had previously been evaluated as "difficult to get along with" and weak in interpersonal skills. ***Mira v. Monroe County School Bd.***, 687 F. Supp. 1538 (S.D. Fla. 1988).

Due Process

A third-year probationary high school teacher whose contract was not renewed brought action alleging violation of her property rights and due process and improper denial of her teaching position. The court held that even though her evaluations showed her as meeting or exceeding expectations on performance criteria, the statute providing for teacher evaluation did not require that evaluation be considered or followed in determining whether to renew contracts of probationary teachers. ***Berhorst v. Maries County R-11 School Dist.***, 805 S.W.2d 696 (Mo. Ct. App. 1991).

Evaluation Procedures

A probationary teacher filed a grievance when she was not rehired, claiming that the school district failed to conduct her evaluation in accordance with the union agreement. An arbitrator ruled in the teacher's favor and ordered her reinstatement. The court of appeal held that the arbitrator had exceeded his authority to demand reinstatement but was within his authority to insist that the school district follow evaluation procedures as agreed upon by the union. (Case does not detail evaluation procedures or failures to follow them.) ***Bellflower Educ. Ass'n v. Bellflower Unified School Dist.***, 279 Cal. Rptr. 179 (Ct. App. 1991).

An elementary teacher employed for twenty-two years in the school district received two poor evaluations, after which termination notice was given. She filed a grievance on both the evaluations and the termination. At issue was the arbitrability of the two issues. The court held that termination proceedings take precedence over grievance arbitration if the termination decision is not arbitrable, which was found to be the case in the collective bargaining agreement. That agreement did not clearly provide for arbitration of grievances concerning performance evaluations that result in termination recommendations. ***Atlantic Educ. Ass'n v. Atlantic Community School Dist.***, 469 N.W.2d 689 (Iowa 1991).

In partial compliance with statutory requirements, the school district sent copies of its proposed teacher evaluation and remediation plan to the union and conducted a series of discussions with union representatives. After discussions, the district unilaterally implemented a plan over the objection of the union. State statute requires that school districts develop evaluation plans in cooperation with teachers or their bargaining representatives. Here the court upheld the Illinois Educational Labor Relations Board (IELRB) ruling that substantive terms of a teacher evaluation are not subject to mandatory bargaining; the "use of the word 'cooperate' does not mandate negotiation." The court overruled the IELRB, however, in holding that the procedural mechanics of implementing an evaluation plan are a mandatory subject of bargaining. ***Board of Educ., LeRoy Community Unit School Dist. No. 2 v. Illinois Educ. Labor Relations Bd.***, 556 N.E.2d 857 (Ill. App. Ct. 1990).

A probationary teacher was not deprived of any substantial right after being dismissed despite an unauthorized signature of the school superintendent on a school principal's form. The superintendent had previously and separately corresponded with the teacher to indicate he would support the principal's evaluation of the teacher. ***Sorell v. Board of Educ. of New York City***, 562 N.Y.S.2d 572 (App. Div. 1990).

An administrator used portions of a video of a teacher conducting a class as a partial basis for a performance evaluation that eventually led to the teacher's dismissal. The teacher filed a claim that she had reasonable expectation of privacy in her classroom and that she was denied due process. The privacy claim was denied on the ground that teaching does not fall within an individual's zone of privacy. The court also determined that the teacher was not denied due process and that the school district did not act arbitrarily in considering the video as part of her evaluation, nor did the video represent her teaching inaccurately. ***Roberts v. Houston Indep. School Dist.***, 788 S.W.2d 107 (Tex. Ct. App. 1990).

The school board refused to negotiate the portion of a School Improvement Plan regarding evaluation criteria. Under the Professional Negotiations Act, the state supreme court held that evaluation procedures are mandatorily negotiable but evaluation criteria are not. ***Board of Educ., U.S.D. No. 352, Goodland v. NEA-Goodland, Kansas***, 785 P.2d 993 (Kan. 1990).

A teacher was partially successful in an action challenging his evaluation and assignment to an improvement (remediation) plan to improve "grade distribution." (His grades were out of line with those of fellow teachers.) His final evaluation stated that "he does not meet performance standards" regarding evaluation of student outcomes. The state high court held that even though the school board used

appropriate performance standards in evaluating the teacher, the indicator regarding grade distribution was not expressly delineated in local evaluation policy, thus the teacher was improperly referred to the improvement team. ***Brown v. Wood County Bd. of Educ.***, 400 S.E.2d 213 (W. Va. 1990).

A state appeals court upheld a decision that the board of education had committed an unfair labor practice by unilaterally implementing a teacher evaluation procedure that was contrary to long-standing policy concerning the effects of supervisor observation and evaluation of teachers on the supervisor/teacher relationship. Part of the new program to improve classroom instruction included written observations—previously excluded in the supervision process. The court held that the board could unilaterally institute the new plan but must negotiate any alteration in the "well established teacher/supervisor relationship" which had previously precluded written observations by supervisors. ***Board of School Trustees of Gary Community School Corp. v. Indiana Educ. Employment Relations Bd.***, 543 N.E.2d 662 (Ind. Ct. App. 1989).

A tenured high school counselor received a warning letter from the superintendent listing ten specific incidents as evidence of inefficiency, incompetence, and neglect of duty. The warning letter stated that the principal would work with her to correct her deficiencies. Six weeks later she was sent a letter of termination containing a restatement of the items listed in the warning letter. After the requested hearing was held, the teacher was dismissed. She filed charges, claiming improper procedures. The court held that the warning letter and termination letters listed the same set of deficiencies and that there was insufficient evidence of failure to correct these deficiencies. The court also held that a report stating a few specific incidents of misconduct, coupled with an inconclusive summary evaluation covering the forty-day remedial period, is not substantial evidence necessary to terminate a tenured teacher. ***Selby v. North Callaway Bd. of Educ.***, 777 S.W.2d 275 (Mo. Ct. App. 1989).

A teacher was nonrenewed for failure to obey reasonable rules of the board and for low performance ratings. It was found by a majority of the hearing committee that the board had substantial evidence justifying nonrenewal for failure to obey rules, but did not find that the teacher's ratings were consistently below expectations. The district court ruled that the board had not conducted a due process hearing in good faith and ordered the teacher reinstated with back pay and benefits. ***Unruh v. Board of Educ., Unified School Dist. 300***, 775 P.2d 171 (Kan. 1989).

A nonprobationary teacher with various "instructional difficulties" over his five-year employment history was sent notice of intent to recommend nonrenewal based on "financial limitations, declining enrollment, and program changes." Erroneously, the board first voted not to renew him before offering him a hearing as required by law; then they corrected the procedure by rescinding their vote. The court reversed the board for its failure to follow its own policy on reduction in force, calling for back pay and possible reinstatement. The evaluation procedure carried out by the principal was upheld though the evidence "barely passed muster," primarily because of limited documentation of efforts by the administration to help the teacher correct his problems. ***Murray v. Altheimer-Sherrill Pub. Schools***, 743 S.W.2d 789 (Ark. 1988).

A first year teacher challenged the school board's nonrenewal of contract. The court ruled that the district was in substantial compliance with a statutory requirement of a "written performance review through the use of a brief supervisory report listing teachers' goals and objectives." ***Retzlaff v. Grand Forks Pub. School Dist. No. 1***, 424 N.W.2d 637 (N.D. 1988).

A tenured teacher dismissed for incompetence charged that she had not received two consecutive unsatisfactory ratings and that the ratings were invalid because they did not include numerical (quantitative) scores, they were completed in two parts, and they were not properly signed. The court held that there were not statutory or regulatory requirements that unsatisfactory ratings contain numerical scores and that one rating form signed by a principal and a separate form signed seven days later by the superintendent constituted one complete rating for purposes of dismissal action. ***Board of Educ. of School Dist. of Philadelphia v. Kushner***, 530 A.2d 541 (Pa. Commw. Ct. 1987).

A tenured teacher of children with disabilities was dismissed for incompetence, specifically inability to control her class and to plan and teach lessons effectively. When she brought charges that dismissal was an excessive penalty, the court held that evidence did not support a finding that placing her back in the classroom after a lesser penalty than dismissal would improve her methods of teaching. ***Mongitore v. Regan***, 520 N.Y.S.2d 194 (App. Div. 1987).

Notice/Remediation

A teacher of nine years was dismissed because his supervisor believed he was unqualified to teach in his assigned field. The appellate court affirmed the trial court's reversal of the dismissal because the school district failed to demonstrate that the teacher's deficiency was irremediable and failed to notify the

teacher of the deficiency. ***Morris v. Illinois State Bd. of Educ.***, 555 N.E.2d 725 (Ill. App. Ct. 1990).

A teacher was unsuccessful in seeking reinstatement based on the school board's minor violation concerning notice. The teacher had been given continuous notice that her work was unsatisfactory. In addition, she had been given many opportunities to correct and improve her unsatisfactory performance. ***Krischer v. School Bd. of Dade County***, 555 So. 2d 436 (Fla. Dist. Ct. App. 1990).

A tenured mathematics teacher challenged his dismissal for inefficiency, insubordination, and violation of due process. The court found as evidence of inefficiency the teacher's poor rapport with students and insufficient communication with parents, frequent requests for transfer out of his classes, and poor student test scores. Use of his high rate of student failures to justify dismissal was found not to violate academic freedom but an indication of his inability to impart knowledge. Insubordination was found where he failed to comply with directives to provide worksheets with problems instead of having students copy them off the board. Three pages of written allegations of inefficiency and insubordination constituted adequate compliance with statutory requirement that charges be put in writing. ***In re Johnson***, 451 N.W.2d 343 (Minn. Ct. App. 1990).

A tenured teacher was dismissed for willful neglect of duty, in part because she failed—after several notices—to have updated student files in preparation for an accreditation visit. The court held that the statutory evaluation provision called for remediation when dismissal was based on incompetence, but that provision was not applicable when dismissal is based on willful neglect of duty. The court also held that while under ordinary circumstances, a teacher's deficiencies in maintaining student files might be inconsequential and remediable, they were significant where imminent decennial accreditation could be jeopardized. ***Gaulden v. Lincoln Parish School Bd.***, 554 So. 2d 152 (La. Ct. App. 1989).

At issue was the board's role in initiating a specific teacher's remediation plan following that teacher's unsatisfactory rating. A 1985 statute pertaining to teacher evaluation provided for a remediation structure for teachers rated unsatisfactory. Interpreting this statute for the first time, the court held that after the general procedures were established locally and approved by the state board, the local board was removed from the process. Administrators must conduct the evaluation, a hearing officer decides charges of incompetence, and that officer's decision would be judicially reviewable to determine whether dismissal was supported by the record. ***Powell v. Board of Educ. of Peoria Dist. 150***, 545 N.E.2d 767 (Ill. App. Ct. 1989).

A North Dakota teacher was terminated for having completed only half of the district's professional growth requirement, which was included in the negotiated agreement with teachers. He sought reinstatement but the court held that under state statute a teacher could be nonrenewed for "lack of qualifications." ***Feldhusen v. Beach Pub. School Dist. No. 3***, 423 N.W.2d 155 (N.D. 1988).

The dismissal of a tenured teacher was affirmed when the court found that the warning letter sent by the superintendent was sufficiently specific as to deficiencies and that the teacher had been given ample time and assistance to correct or remove the deficiencies. The court found the charges that the teacher had failed to improve constituted adequate notice under the statute. ***Adkins v. Hazelwood School Dist.***, 743 S.W.2d 869 (Mo. Ct. App. 1987).

A music teacher with sixteen years of experience in the Dade County school system was dismissed following two years of unacceptable evaluations. The Education Practice Commission found that she had received ten years of unsatisfactory evaluations and added the penalty of revoking her certificate for three years. She appealed to the court, which found that there was only one year in the fourteen year span between 1970 and 1984 where her overall evaluation was unacceptable. In many of those thirteen acceptable annual evaluations, no deficiencies were noted by the evaluator. The court reversed and remanded to the Commission. ***Walker v. Turlington***, 516 So. 2d 1123 (Fla. Dist. Ct. App. 1987).

Testing

Teachers' union brought suit alleging that evaluation of certain teachers (teachers of mathematics, English language, communication who had received preliminary unsatisfactory ratings resulting from their students' poor performance on achievement test) violated equal protection and due process rights. The court held that evaluation of teachers of specified subjects on the basis of their students' performance on achievement test was rationally related to a legitimate state objective of assuring competency of teachers. The court also accepted the board's justification of evaluation as the need to document a teacher's deficiency based on more than test results. ***St. Louis Teacher Union, Local 420, AFL-CIO v. St. Louis Bd. of Educ.***, 652 F. Supp. 425 (E.D. Mo. 1987).

Miscellaneous

A teacher brought an action against the school board for transferring her to another school. She insisted that she was transferred because she filed a grievance challenging her evaluation. The Virginia Supreme Court held that transfers were specifically

excluded from grievance procedures. ***Tazewell County School Bd. v. Gillenwater***, 400 S.E.2d 199 (Va. 1991).

A teacher wrote a satirical letter that was published in a December issue of the high school newspaper, after which he was warned that his evaluation might indicate that he "Need[ed] Improvement" in the area of "Professional Responsibility." His April evaluation indicated this deficiency, and he was denied a step increment in pay for the following year. The court held that if he suffered in evaluation following publication of the letter, he was protected by the first amendment, because the letter (dealing with alleged gender discrimination) was a matter of public concern. The case was remanded for further proceeding on matter of evaluation. ***Seemuller v. Fairfax County School Bd.***, 878 F.2d 1578 (4th Cir. 1989).

One of three evaluators of a probationary teacher who was terminated did not appear at the hearing as required by the collective bargaining contract. This did not deprive the teacher of due process. Adequate proof to support the unsatisfactory rating was supplied by the other two evaluators at the hearing. ***Swartz v. Board of Educ. of New York City School Dist.***, 536 N.Y.S.2d 500 (App. Div. 1989).

A tenured physical education teacher was denied reappointment as varsity football coach after receiving a negative evaluation of his performance for the previous year as varsity coach. An arbitrator held that the negative evaluation should be removed from his file and replaced by another; further grievances followed. The court held that, while arbitration should be allowed when related to the manner in which evaluations of teachers are conducted, there could be no arbitration in this case because the board had a nondelegable responsibility to assess the qualifications of teachers for appointment to positions as varsity coaches. ***Riverhead Cent. School Dist. v. Riverhead Cent. Faculty Ass'n***, 528 N.Y.S.2d 611 (App. Div. 1988).

A teacher who had received satisfactory evaluations during thirteen years of teaching was dismissed for incompetence based on her poor performance in four interviews preceding a transfer. The court held that the dismissal was improper. ***Trustees, Missoula County School Dist. No. 1 v. Anderson***, 757 P.2d 1315 (Mont. 1988).

A probationary teacher was nonrenewed in part because of poor communication skills with parents. The board claimed it did not have to give a 90-day notice of nonrenewal when one of the reasons for nonrenewal did not involve "classroom performance,"—poor communication skills with parents. The Supreme Court of Arizona held that classroom performance does not define the place where activity in question occurs, but includes factors that pertain to teaching ability, technique, and effectiveness, of which communication with parents is one aspect. Therefore, the teacher was found to have been eligible for the 90-day notice. ***Wheeler v. Yuma School Dist. No. 1***, 750 P.2d 860 (Ariz. 1988).

A high school science teacher who had achieved tenure at another school in the district was hired as a regular substitute. After completing one term, he was granted probationary status; later he was terminated. Though he sought to apply three separate statutory provisions to establish that he technically had acquired tenure, the court held that a board had a right to hold a teacher to full probationary term to provide an opportunity to evaluate the teacher before the critical determination of tenure is made. ***Carpenter v. Board of Educ., Locust Valley Cent. School Dist.***, 527 N.Y.S.2d 733 (App. Div. 1988).

A probationary teacher was discharged for alleged failure to complete a program designed by the district to improve his ability to maintain classroom discipline. The court of appeals affirmed that it was appropriate for the arbitrator to consider whether the district had complied with the collective bargaining agreement. The discharge itself was not the issue. ***Luoto v. Long Creek School Dist. No. 17***, 747 P.2d 370 (Or. Ct. App. 1987).

A teacher who was nonrenewed asserted that the district based its decision on subjective evaluations; in his quantitative, "objective" evaluations, he was rated between "good" and "average." From this situation, he derived charges of discrimination. The court held, however, that subjective evaluations do not necessarily render invalid an employer's asserted reasons for an employment decision. ***Tyler v. Hot Springs School Dist. No. 6***, 827 F.2d 1227 (8th Cir. 1987).

A teacher brought suit against a parent who—based on permitted classroom observations—attacked the teacher's competency in a letter and verbally to the principal. The statements were held to be opinion based on fact, therefore, constitutionally protected. The teacher's suit was dismissed. ***Zuber v. Bordier***, 522 N.Y.S.2d 610 (App. Div. 1987).

A nontenured teacher was given notice of nonrenewal, though no reasons were given. She had received five evaluations over a two-year period, none indicating that her work was unsatisfactory. She filed suit, alleging breach of contract and arbitrary and capricious action by the board. Specifically, she charged that article XI of the master agreement, which provided for evaluation of assistance for unsatisfactory teachers, had been disregarded. The court held that since she had not received unsatis-

factory evaluations, article XI was not applicable. ***Miller v. Board of Educ., Unified School Dist. No. 470***, 752 P.2d 113 (Kan. 1988).

A substitute teacher sought continued employment and tenure based on a statute requiring preference in hiring substitutes who exceeded 120 days of service in one school year. The court held that while the substitute teacher was entitled to employment, the school board had a statutory right to review teaching performance and exercise discretion in the granting of tenure. ***Roek v. Board of Educ.***, 422 N.W.2d 680 (Mich. 1988).

A Detroit teacher with twenty-one years experience was given an unsatisfactory evaluation in the spring; she and the union protested the evaluation but did not pursue the grievance to step four of the procedure. She then filed in court, alleging negligent evaluation and intentional infliction of emotional distress. The court held that school officials could not be held liable for intentional infliction of emotional distress caused by their evaluation of a teacher's classroom performance even if they knew that their evaluations would cause a teacher emotional distress. Claim of negligent evaluation was contractual rather than tortious, thus barred by the teacher's failure to exhaust grievance procedures. ***Sankar v. Detroit Bd. of Educ.***, 409 N.W.2d 213 (Mich. Ct. App. 1987).

Professional Support Staff

Kalamaras was hired as a full time, temporary certified librarian. During her employment, her evaluations indicated that she needed improvement. The district dismissed her, and later hired a replacement. The appellate court affirmed the trial court ruling that Kalamaras became a probationary teacher upon completion of 75% of the school year and was entitled to written notice of unemployment. A school district may dismiss an unsatisfactory teacher but may not continue past that time to employ a teacher, then fail to rehire her if an appropriate vacancy is available the following year. ***Kalamaras v. Albany Unified School Dist.***, 277 Cal. Rptr. 577 (Cal. Ct. App. 1991).

When the school board decided not to renew the initial contract of school counselor, she filed numerous charges including failure to follow evaluation procedures. The court ruled that, as a first year employee, she had no rights except to be notified by March 15 that her contract would not be renewed. The court accepted the school district's argument that its evaluation policy was primarily for operational and supervisory duties and not for the purpose of protecting initial contract teachers. ***Leonard v. Converse County School Dist. #2***, 788 P.2d 1119 (Wyo. 1990).

A tenured school nurse was dismissed when she failed to obtain parental consent before allowing three children to receive inoculations. The court ordered her reinstated because several of the behaviors cited were merely technical violations and were considered remediable. She was entitled to written warning and reinstatement with back pay. ***Board of Educ. City of Chicago v. Illinois State Bd. of Educ.***, 513 N.E.2d 845 (Ill. App. Ct. 1987).

Noncertified Staff

Discrimination

An applicant for a custodial position brought charges of religious discrimination when he was rejected by the school board. The court held that he failed to establish a prima facie case of discrimination and that he was not hired because of poor work habits and poor evaluations from former jobs, not because he was a reformed Hebrew preacher. ***Durham v. Bleckley County School System***, 680 F. Supp. 1555 (M.D. Ga. 1988).

Evaluation procedures

A school bus driver sought reinstatement after being terminated as a result of four accidents and a traffic citation for running a red light and for hitting a car. The local school board was found to have "substantially complied with evaluation procedures by sending a letter after each of his accidents." ***Hare v. Randolph County Bd. of Educ.***, 396 S.E.2d 203 (W. Va. 1990).

A warehouse foreman hired in 1984 received an "unfavorable performance" report and was placed on probation for one month. The next reports were satisfactory for more than one year. After taking five weeks of authorized medical leave in 1985, he received an unfavorable performance report which recommended immediate dismissal. The state supreme court ruled that the school board was subject to provisions of the school personnel handbook that provided that classified employees could be dismissed for poor work only after the school district had attempted to improve their work performance. ***Adams County School Dist. No. 50 v. Dickey***, 791 P.2d 688 (Colo. 1990).

Miscellaneous

A tenured school secretary submitted a three year notice of intended retirement in order to qualify for special retirement allowances provided in the collective bargaining agreement. After her husband died and a child became afflicted with a serious illness, she

requested an extension of her retirement date. The board first rejected her request, then indicated that she would have to pass a performance-based evaluation as a condition of extending the retirement date. The court held that the board could not, without justification and in conflict with past practice, require such evaluation as a condition of extending the retirement date. ***Hall v. Board of Educ., Township of Jefferson, Morris County***, 593 A.2d 304 (N.J. 1991).

Higher Education

Administrators

Due Process

A vocational director at a junior college was dismissed for lack of leadership, mishandling funds, and failure to take reassignments. The court held that the board did not violate the director's due process rights and that evidence substantiated the board's decision. ***Hoffman v. Board of Trustees***, 567 So. 2d 838 (Miss. 1990).

Faculty

Discrimination

A tenured associate professor was denied promotion to full professor. It was held that the university committee's decision was neither gender-based nor a pretext for gender-based discrimination. Rather it was based on an evaluation of her scholarship, teaching, allocation of time, choice of journals, service, and recommendations. ***University of S. Calif. v. Superior Court***, 272 Cal. Rptr. 264 (Cal. Ct. App. 1990).

Due Process

A Teacher who taught in a laboratory school under a one-year contract was not renewed. He filed a grievance alleging that his evaluation and dismissal were improper. At each level of the administrative proceedings his allegations were rejected and the court of appeals affirmed. ***Gruszczynski v. State Bd. of Higher Educ.***, 806 P.2d 1168 (Or. Ct. App. 1991).

A community college employee hired under three successive one-year contracts was evaluated during the third year and told that there were problems with her work performance. Later, the president and board decided not to renew her contract. She challenged the decision with several arguments relating performance evaluation to renewal, but the board held that the fact that performance evaluations were conducted did not show that her due process rights were violated by the decision not to renew. ***Machunze v. Chemeketa Community College***, 810 P.2d 406 (Or. Ct. App. 1991).

A professor at Grand Valley State University brought action against the university and its president seeking access to confidential peer review evaluations and information regarding merit salary increases. It was held that the documents sought under the "Employees Right to Know Act" were exempt from disclosure. ***Muskovitz v. Lubbers***, 452 N.W.2d 854 (Mich. Ct. App. 1990).

A tenured professor was denied a merit increase for refusing to administer standardized teacher evaluation forms in her classes. She claimed violation of academic freedom. The court held that such student evaluations do not violate a professor's right to academic freedom and that she was denied a merit increase for failing to perform a duty that fell within the authority of the university. ***Wirsing v. Board of Regents of Univ. of Colo.***, 739 F. Supp. 551 (D. Colo. 1990).

An assistant professor denied tenure in part because of his lenient grading procedures tried to establish denial of equal protection based on little or no reliance on this factor in making tenure decisions with other faculty. The court held that the university's decision did not violate equal protection, even though grading policies of other faculty members had not been considered or received as much emphasis in tenure decisions. The concern with grading policy bore a rational relation to the legitimate purpose of maintaining quality of the university faculty. Also, the faculty's decision should be respected as long as it does not deviate substantially from accepted academic norms. ***Levi v. University of Texas at San Antonio***, 840 F.2d 277 (5th Cir. 1988).

A faculty member denied tenure sought access to tenure committee reports. The court held that the reports were actually "performance evaluations" and were subject to examination rather than letters of recommendation which are not subject to disclosure. ***Pennsylvania State Univ. v. Department of Labor***, 536 A.2d 852 (Pa. Commw. Ct. 1988).

Defamation

A college professor (Gautschi) sued another professor (Maisel) for slander when the latter reported to the tenure committee (of which he was a member) the negative comments of a professor at another university about Gautschi's academic qualifications. Maisel's comments were held by the court to be conditionally privileged, since they were made

to the tenure committee in "an activity beneficial to his employer in reviewing another employee's credentials." Furthermore, plaintiff submitted no evidence that the professor at the other college had not said the things attributed to him. ***Gautschi v. Maisel***, 565 A.2d 1009 (Me. 1989).

In an action by a nonrenewed art professor alleging defamation, the Supreme Court of Pennsylvania held that evaluations of the professor's performance provided by the department chair and an outside consultant were not defamatory; although they did not portray the professor in glowing terms, the substance of the report included frank opinions, devoid of innuendo. ***Baker v. Lafayette College***, 532 A.2d 399 (Pa. 1987).

Nonfaculty Employees

Nonfaculty employees of the university brought action seeking recalculation of merit pay raises. The staff employee handbook stated that employees of the university would receive at least one evaluation a year and those evaluations would be the basis of merit pay decisions. A circuit court dismissed on grounds of sovereign immunity but an appellate court reversed and remanded. It held that though the board does not have to follow any particular employee evaluation policy, when such policy is adopted by a board, the latter is bound to follow it. ***Breazeale v. Board of Trustees, Univ. of S. Alabama***, 575 So. 2d 1126 (Ala. Civ. App. 1991).

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TORT LIABILITY

TWELFTH Series, Number 4

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Negligence

The court failed to find negligence in a case where a child was injured when she fell off a six-foot slide. The teacher on duty had over twenty-two years of experience with young students, and she had taken safety courses instructing her how to teach children to play safely on playground equipment. ***Brooks v. Orleans Parish School Bd.***, 560 So. 2d 633 (La. Ct. App. 1990).

A fourth-grade student was injured when struck by a rock thrown by another student. In denying the student's claim for damages, the court found that no amount of planned supervision by teachers would have prevented the unforeseeable accident. ***Green v. Bester***, 568 So. 2d. 792 (Ala. 1990).

A student was injured in an accident in his home that involved chemicals he had stolen from school earlier in the day. In absolving the teacher of responsibility, the court found the student's conduct unforeseeable and beyond contributory negligence to the point of culpability. ***Brazell v. Board of Educ. of Niskayuna Schools***, 557 N.Y.S.2d 645 (App. Div. 1990).

A teacher who was raped by a student brought an action against two assistant principals alleging negligent supervision. The court dismissed the action explaining that an injured employee who sues a co-employee for injuries covered by workers' compensation must allege more than that the employee failed to provide a reasonably safe place to work. ***Stewart v. Little***, 797 S.W.2d 862 (Mo. Ct. App. 1990).

Students and their mother brought an action to recover for a principal's decision to release the students into the custody of their father. The court found that the principal had exercised a degree of care consistent with that of a reasonably prudent parent. The father had presented a court order transferring custody to him, and the principal was bound to obey it. ***Sprecher v. Port Washington Union Free School Dist.***, 561 N.Y.S.2d 284 (App. Div. 1990).

A student who slipped on a puddle of water and broke his elbow brought an action for negligent supervision against two physical education teachers. The court found the teachers had exercised reasonable and proper supervision. Both teachers had been teaching at the school for only a few weeks, and neither was aware of the tendency for roof vents to leak water on the floor. ***Best v. Houtz***, 541 So. 2d 8 (Ala. 1989).

A student appealed an order of the Industrial Commission which held that his shop teacher was not negligent in connection with injuries he sustained in shop class. The court held that the teacher did not owe the student a greater duty of care due to the student's deafness. Rather, the standard of care was that of ordinary prudence given the situation of the student's handicap. ***Payne v. North Carolina Dep't of Human Resources***, 382 S.E.2d 449 (N.C. Ct. App. 1989).

A Michigan high school teacher attempted to pull back the chair of a student in order to discipline him. Fasteners intended to hold the seat to the chair were missing causing the student to fall to the floor and sustain injury. As the teacher attempted to maintain discipline, without showing a grossly abusive disregard for the health and safety of the student, no cause for negligence was found. ***Atkinson v. DeBraber***, 446 N.W.2d 637 (Mich. Ct. App. 1989).

A teacher was assaulted and injured while he was stationed at an open gate at the end of a New York City school playground. His action against the board of education alleged that it negligently allowed the gate to remain broken and failed to provide adequate security. Finding the provision of security to be a governmental function, the court held the school board immune from liability. ***Bonner v. City of N.Y.***, 539 N.Y.S.2d 728 (App. Div 1989).

An action alleging improper instruction and supervision of a wrestling class was brought against a physical education teacher. The court found testimony on how another teacher conducted his class in the year following the accident to be irrelevant. The teacher's methods of teaching his class were not found substandard to the extent that they created an unreasonable risk of injury. ***Llorence v. Natchitoches Parish School Bd.***, 529 So. 2d 479 (La. Ct. App. 1988).

A teacher who stopped his van near a group of boys off school property was not found liable for the injuries incurred by one of the students who climbed onto his bumper and fell injuring his head. No duty was owed to the student who was not on his way to or from school. ***Torsiello v. Oakland Unified School Dist.***, 242 Cal. Rptr. 752 (Ct. App. 1987).

A student who lost the sight of one eye from an injury sustained while his teacher was in the hall supervising the movement of her students into the classroom was not able to show liability on the part of the teacher. With no history of poor behavior by students when she was briefly away from the classroom, the court found she was following her normal course of conduct in which she cannot supervise every child at all times. ***Albers v. Community Consol. No. 204 School***, 508 N.E.2d 1252 (Ill. App. Ct. 1987).

A teacher who was reading a newspaper failed to supervise adequately his physical education class during a touch football game in which a student was

injured. Lack of supervision was held a ministerial act not protected from tort liability. ***Hyman v. Green***, 403 N.W.2d 597 (Mich. Ct. App. 1987).

Negligence Defenses

Common Law (Governmental) Immunity

A Tennessee teacher was assaulted in her school building prior to the beginning of the school year on a day in which teachers were allowed to set up their classrooms. While most of the school's doors were locked, the assailant entered through one which was wedged open with a glove. The teacher was unsuccessful in her action for damages as the method of securing the school building was found a discretionary decision of the principal protected by governmental immunity. ***Doe v. Board of Educ. of Memphis City Schools***, 799 S.W.2d 246 (Tenn. Ct. App. 1990).

A fifteen-year-old student was killed when she was struck by an automobile after departing from a school bus. For several days prior to the accident, the driver had allowed the girl to leave the bus by the rear emergency exit to avoid harassment from other students. In finding against the driver and school district, the court determined that the driver's actions created liability which fell within the motor vehicle exception to governmental immunity. ***Nolan v. Bronson***, 460 N.W.2d 284 (Mich. Ct. App. 1990).

A principal's decision to call off an ambulance and failing to give adequate first aid were not seen as basic policy decisions for which immunity was a defense. The discretionary function exception to liability does not apply to negligent operational decision-making. ***Czaplicki v. Gooding Joint School Dist. No. 231***, 775 P.2d 640 (Idaho 1989).

While attempting to hold an eight-year-old student in position to administer corporal punishment, a principal broke the student's arm. In rejecting an immunity defense, the court found it a matter for the jury to decide whether the principal exercised sound discretion in the administration of the punishment, and whether it was excessive or unduly severe. ***Crews v. McQueen***, 285 S.E.2d 712 (Ga. Ct. App. 1989).

A physical education teacher was charged with negligence after a student was injured in class while playing football without protective equipment. The court failed to find facts to support a charge of gross negligence, and the teacher was determined to be an employee of an immune governmental entity. ***Lentz v. Morris***, 372 S.E.2d 608 (Va. 1988).

The alleged acts of a principal preventing a teacher from leaving a meeting where parents assaulted him, the superintendent threatening and physically detaining him during a meeting concerning his evaluation, and the superintendent making defamatory statements about him in the presence of students were seen as intentional torts for which immunity did not provide a defense. ***Bego v. Gordon***, 407 N.W.2d 801 (S.D. 1987).

Statutory Immunity

A teacher who was raped by a student brought an action against two assistant principals alleging negligent supervision. In dismissing the action, the court explained that an injured employee who sues a co-employee for injuries covered by worker's compensation must allege more than that the employee failed to provide a reasonably safe place to work. ***Stewart v. Little***, 797 S.W.2d 862 (Mo. Ct. App. 1990).

A high school student was injured by an explosion during an automobile mechanics course when the student attempted to "prime" a carburetor by pouring gasoline directly into it. In its decision for the teacher, the court found that the circumstances did not involve the operation and use of an automobile within the meaning of the statute waiving sovereign immunity. ***Naranjo v. Southwest Indep. School Dist.***, 777 S.W.2d 190 (Tex. Ct. App. 1989).

A teacher, who was also a justice of the peace, was found entitled to judicial immunity when charged with negligently refusing to issue an arrest warrant for a high school student. ***Moore v. Taylor***, 541 So. 2d 378 (La. Ct. App. 1989).

A school's principal reported accusations of a substitute teacher's physical abuse of students while disciplining them. After being acquitted of the charges, the teacher brought suit against the principal alleging malicious prosecution, defamation, intentional infliction of emotional distress, and negligence in reporting the allegations. In finding for the principal, the court cited statutory immunity from civil and criminal liability to anyone who makes a report or otherwise participates in a program for reporting suspected child abuse. ***Davis v. Durham City Schools***, 372 S.E.2d 318 (N.C. Ct. App. 1988).

There were material issues of fact as to whether a school bus operator had properly activated flashers to indicate that the bus was slowing before stopping to discharge school children. The evidence of acts which could fall under the motor vehicle exception to governmental immunity caused the court to remand the case for trial. ***Hitchcock v. Garvin***, 738 S.W.2d 34 (Tex. Ct. App. 1987).

Notice of Claim

A former student brought suit against his former teacher and school district claiming sexual abuse thirteen years earlier. While appeal of the decision that the claim was untimely was pending, a statute was enacted which stated that a sexual abuse claim does not arise until the victim knew or had reason to know his injury was caused by abuse. The state supreme court decided that the statute was constitutional, retroactively applicable, and remanded the case for trial. ***K. E. v. Hoffman***, 452 N.W.2d 509 (Minn. Ct. App. 1990).

A school bus driver who was injured in the course of her employment brought an action for damages against her school district. The court denied the district's motion to dismiss the action as untimely. A twelve-month statue of limitations for claims against a county did not apply to claims against a county school district. ***Payne v. Blackwell***, 384 S.E.2d 393 (Ga. 1989).

An applicant for a teaching position brought an action against the school principal alleging breach of implied contract of employment. The trial court's determination that the claim was barred by the Governmental Claims Act statute of limitations was reversed on appeal. By offering a teaching position without the approval of the board of trustees, the principal had acted outside the scope of his duties. Therefore the one-year statute of limitations was not applicable. ***Milton v. Mitchell***, 762 P.2d 372 (Wyo. 1988).

A cause of action based on a sexual assault of a minor by his teacher was deemed to accrue at the time the parent discovers or should have discovered the assault. The assault was seen as having arisen from the job-created authority over the student thus imposing liability. ***John R. v. Oakland Unified School Dist.***, 240 Cal. Rptr. 319 (Ct. App. 1987).

Comparative Negligence

A school employee sought damages for an alleged sexual assault on school grounds. In appealing the trial court's decision, the employee objected to the charge to the jury on comparative negligence. The decision was upheld as it was found reasonable for the jury to examine the employee's obligation to ascertain who was knocking at her door prior to unlocking and opening it. ***Louise B. G. v. New York City Bd. of Educ.***, 533 N.Y.S.2d 293 (App. Div. 1988).

Attorney Fees

A school board official successfully brought an action to stop a recall election. She then filed a motion claiming that as a public interest litigator, attorney fees and court costs should not be assessed against her. In granting the motion, the court held that four tests were met: (1) the case was designed to effectuate strong public policies; (2) numerous people benefited; (3) only a private party could have been expected to bring the suit; and (4) the board official did not otherwise have a sufficient economic incentive to file suit. ***McCormick v. Smith***, 799 P.2d 287 (Alaska 1990).

An elementary school principal successfully defended himself against charges of sexual assault of girls who attended his school. He then sought recognition of statutory indemnification for legal services. The court held that the statute only applied in civil actions, unlike the criminal proceedings which had involved the principal. ***Monti v. Warwick School Comm.***, 554 A.2d 638 (R.I. 1989).

A teacher who had successfully defended himself against a criminal charge of sexual abuse of a student brought an action against his school district to recover for legal fees. The dismissal of the case was upheld as the district's statutory authority to defend a teacher in a criminal action only arises out of disciplinary action taken against a pupil. ***Lamb v. Westmoreland Cent. School Dist.***, 533 N.Y.S.2d 157 (App. Div. 1988).

Assault and Battery

A school superintendent became engaged in a physical altercation with a teacher, picked her up, carried her over his shoulder, and deposited her on a couch in the teacher's lounge. The court found the superintendent committed an unjustified assault and that his actions constituted willful misconduct as a matter of law. ***Binstock v. Fort Yates Pub. School Dist. No. 4***, 463 N.W.2d 837 (N.D. 1990).

A teacher and principal were charged with battery in connection with the infliction of corporal punishment on a sixth-grade student. The punishment, which consisted of twenty-four blows with an oak paddle, was held excessive. ***People v. Wehmeyer***, 509 N.E.2d 605 (Ill. App. Ct. 1987).

Defamation

A group of high school teachers brought an action to recover for libel and invasion of privacy in

connection with a newspaper article about a meeting between parents and school officials. The article reported the meeting was called in response to the expulsion of a student for engaging in a fight with a teacher. Also reported was a parental call for an investigation of "teachers having affairs with students." The teacher involved in the fight was joined by twenty-seven other teachers in claiming the defamation and privacy violation. The court held that the article did not defame the group of teachers as such an action would have required libelous statements to apply identifiably to each member of the group. ***O'Brian v. Williamson Daily News***, 735 F. Supp. 218 (E.D. Ky. 1990).

A teacher alleged defamation in his suit against a school newspaper advisor and school district. In finding no cause for action the court examined each of a student's statements under question. The accusation that the plaintiff was the "worst teacher" in the school was seen as a subjective judgment and simply an expression of anger or disgust. Calling the teacher a "babbler" was seen as an exaggerated expression conveying the student's disapproval of the plaintiff's speaking or teaching style. Finally, a headline that described the teacher as "terrorized" by a smoke bomb in his room fell into the category of rhetorical hyperbole. ***Moyer v. Amador Valley Joint Union High School Dist.***, 275 Cal. Rptr. 494 (Ct. App. 1990).

After a junior high school coach lost his job, he sued the high school coach for defamation, outrageous conduct, and invasion of privacy. The head coach confronted the plaintiff with his past conviction for child molestation and made the information available to others. The court held that the truth of the statements precluded an action for defamation, and that the actions of the coach did not reach the level of outrageous conduct. A mere lapse of time was not found to render the information private. ***Lindemuth v. Jefferson County School Dist. R-1***, 765 P.2d 1057 (Colo. Ct. App. 1988).

A libel action was brought against a school social worker by the step-grandfather of a fourteen-year-old girl for the dissemination of a report alleging his sexual abuse of the girl. Despite the fact that the report was found to be false, the court held that the complete absence of malice on the part of the defendant warranted qualified immunity from liability. ***Dunajewski v. Bellmore-Merrick Cent. High School Dist.***, 526 N.Y.S.2d 139 (App. Div. 1988).

A former teacher brought an action claiming the denial of his civil rights based on the presence of allegedly false and defamatory charges in his personnel file. He sought appeal when he was unable to show the likelihood of future disclosure. The decision was upheld as the superintendent had directed the allegations be deleted from the personnel file and ordered his subordinates not to reveal the allegations to prospective employers. ***Brandt v. Board of Coop. Educ. Servs.***, 845 F.2d 416 (2d Cir. 1988).

The term "misconduct" was not held defamatory when used in a termination letter from a business manager to a substitute teacher. While the court held that the term could be considered defamatory in the abstract, in this instance it was mere opinion. ***Goralski v. Pizzimenti***, 540 A.2d 595 (Pa. Commw. Ct. 1988).

A superintendent of schools brought an action for libel against a newspaper which published an editorial following his appearance on a radio show. The newspaper made statements concerning the superintendent's views on pupils with aids and his alleged efforts to block the reporting of public correspondence with the school district. The court held that the positions taken in the editorial were pure opinion and involved matters of public concern and were thus constitutionally protected. ***Dow v. New Haven Indep. Inc.***, 549 A.2d 683 (Conn. Super. Ct. 1987).

A teacher was unsuccessful in his action against a newspaper alleging an invasion of his privacy. The article told of a suit by the teacher against his principal over an alleged libelous evaluation report, and how ten years before the teacher had been acquitted of murdering his wife. The court held the newsworthiness of the article precluded an action. ***Waser v. San Diego Union***, 236 Cal. Rptr. 772 (Ct. App. 1987).

In denying a substitute teacher's action for libel, slander and harassment, the court held that statements in a termination letter were not criticisms of the teacher's skills but rather comments on his adherence to administrative policies. ***Sobel v. Wingard***, 531 A.2d 520 (Pa. Super. Ct. 1987).

A principal's suspension letter to a student was the basis for a claim of defamation and the intentional infliction of emotional distress. The action was dismissed in the absence of malice or the publication of defamatory information. ***Keeler v. Everett Area School Dist.***, 533 A.2d 836 (Pa. Commw. Ct. 1987).

Workers' Compensation

An injured teacher unsuccessfully sued for lost past and future earnings from an alleged permanent disability incurred at work. Although evidence that a plaintiff voluntarily chose to retire is often inadmissible, the court allowed the evidence as it was determined to have significant value in raising questions about the teacher's motivation for not working. ***Kish v. Board of Educ.***, 559 N.Y.S.2d 687 (N.Y. 1990).

An employee of a company which had contracted with a school district to provide transportation for handicapped students was denied damages for an injury incurred when the brakes on his bus failed. The contract between the school district and the company was intended to provide benefit for transported students not third-party benefits to an employee of a subcontracted company. ***Dupont v. Yellow Cab Co.***, 565 So. 2d 190 (Ala. 1990).

The difference between an occupational disease and a compensable personal injury was at issue when a teacher was forced to resign due to health complications from exposure to pesticides. The court found compensation appropriate since the teacher knew she was allergic and the school district said she would not be exposed. ***Lorentzen v. Industrial Comm'n of Ariz.***, 790 P.2d 765 (Ariz. Ct. App. 1990).

A teacher who suffered an eye injury during a Sunday softball game was denied compensation. The game was organized by a school committee, but the court held that the activity was not in the course of the teacher's employment, and only indirectly of benefit to the school. ***Hutchinson v. Dade County School Bd.***, 561 So. 2d 1291 (Fla. Dist. Ct. App. 1990).

While driving home from school after attending a conference in another city, a teacher was permanently disabled in a traffic accident. The accident occurred while the teacher was deviating from her route home to stop by her school. Since she did not follow a route directly from the conference to her home, her injury was not found compensable. ***Reynolds v. School Dist. of Omaha***, 461 N.W.2d 758 (Neb. 1990).

While enroute to the state capital to participate in "Lobby Day," a teacher was injured in an automobile accident. In denying her request for workers' compensation, the court held that the trip was not a function of her work. Lobbying, even for improvements in public education and public funding, did not come under the duel purpose or mutual benefit doctrine. ***Stansbarger v. Consolidated School Dist. #1***, 796 S.W.2d 938 (Mo. Ct. App. 1990).

A consideration of the totality of the circumstances led a court to reverse a denial of workers' compensation benefits. Having left her home early to stop at another school, the teacher was injured when she missed a step and fell. The court noted that the teacher stopped by the school to collect money for a fund used to provide expressions of sympathy and congratulations to district employees. Additionally, the stop was made on school district property minutes before the teacher's workday was to begin. ***Fisher v. Mayfield***, 551 N.E.2d 1271 (Ohio 1990).

A teacher unsuccessfully appealed a compensation order. In denying certain medical bills, the court explained that an injured worker cannot be compensated for independent medical treatment when the employer has indicated a willingness to furnish treatment and has actively made such services available. ***Bowles v. Los Lunas Schools***, 781 P.2d 1178 (N.M. Ct. App. 1989).

Workers' compensation benefits were denied to a school district assistant cook when she failed to establish the extent of her disability by refusing to return to work on a modified basis. ***Risch v. North Dakota Workers' Compensation Bureau***, 447 N.W.2d 308 (N.D. 1989).

A school board employee was injured when the brace she wore on her leg gave way causing her to fall. The court explained that since the fall was a result of her personal condition, to uphold the claim would violate the legislative intent of the applicable statutes. ***Leon County School Bd. v. Grimes***, 548 So. 2d 205 (Fla. 1989).

A teacher's mental disorder reached a point of suicidal depression after he was slapped by an eighth-grade girl. In denying his claim for benefits, the court failed to find that the slapping was an event which arose from a stress situation of a greater dimension than that experienced by other teachers. ***Board of Educ. of Chicago v. Industrial Comm'n***, 538 N.E.2d 830 (Ill. App. Ct. 1989).

Tortious Interference With a Contract

A demoted high school principal sued school board members, the school district and two supervisors claiming false accusations of incompetency, exaggerated accusatory memos, and implications of poor conduct by students at his school. The court held that the malice was not material as there was a justifiable purpose for the defendant's actions. Furthermore, there was no evidence that the supervisors were motivated solely by malice or ill will against the principal. ***Franklin v. Harris***, 762 S.W.2d 847 (Mo. Ct. App. 1989).

Products Liability

Suit was brought by a school employee who was injured while attempting to close a school lunch table. The manufacturer of the table was found liable on the "failure to warn" or "dangerous design" theory. No assumption of risk was found as the employee was not aware of the amount of force necessary to close the table. ***Strain v. Mitchell Mfr. Co.***, 534 So. 2d 1385 (La. Ct. App. 1989).

Constitutional Torts

A teacher successfully had an action for damages against him dismissed in a case following an injury sustained by a student when the teacher stepped into a supply room during class. While the court recognized that claims could arise under due process clauses of the state and federal constitutions, the teacher was not found to have acted with callous indifference to the student's rights. ***Moore v. Port Arthur Indep. School Dist.***, 751 F. Supp. 671 (E.D. Tex. 1990).

In an attempt to maintain discipline, an aide to a high school gym teacher broke a student's arm when he threw the student to the floor. The student's civil rights action against the teacher and aide was unsuccessful as there was a question whether the state provided adequate remedies for a violation of due process rights through excessive punishment. ***Coriz v. Martinez***, 915 F.2d 1469 (10th Cir. 1990).

A teacher who was dragged from her classroom by her principal alleged deprivations of her fourth and fourteenth amendment rights, a cause for action under title VII of the Civil Rights Act of 1964, and state law claims for assault and battery, intentional infliction of emotional distress, negligence, and libel. The court found that the alleged actions by the principal were not of constitutional magnitude and that the issues of human dignity and standards of decency, if proven, would justify appropriate relief in a court of general jurisdiction. ***Coleman v. Wirtz***, 745 F. Supp. 434 (N.D. Ohio 1990).

In a case remanded from the Supreme Court, a female member of a high school band was successful in her action against school officials. She had alleged injuries from sexual assaults by the band's director. The court found she could maintain a civil rights action against the school officials for failing to take action on complaints of sexual misconduct which caused her constitutional harm. ***Stoneking v. Bradford Area School Dist.***, 882 F.2d 720 (3d Cir. 1989).

A librarian alleged her denial of "selected status" and transfer to another school were in retaliation for comments made about the school system. In response to a reporter's questions, she had discussed problems relating to teaching in an inner-city environment and talked about some positive aspects of teaching. The court found her statements constitutionally protected and the motivating factor in decisions regarding her status and transfer. She was therefore found entitled to compensatory damages for emotional distress, humiliation, and injury to her reputation. ***Thompson v. Board of Educ. of City of Chicago***, 711 F.Supp. 394 (N.D. Ill. 1989).

Following several incidents of alleged poor judgment, a principal was required to submit to a psychiatric examination and was later demoted when his school was closed. He alleged a denial of his rights to privacy and liberty as guaranteed by the fourth and fourteenth amendments. In denying the claim, the court held that in ordering the examination the school committee was merely seeking to insure that if the principal returned to work he would not jeopardize the school system's interest in providing a safe and healthy educational environment. ***Daury v. Smith***, 842 F.2d 9 (1st Cir. 1988).

Although a jury found against a teacher who slapped and kicked several of her students, her actions were not found to have violated the children's constitutional rights. ***Rubek v. Barnhart***, 814 F.2d 1283 (8th Cir. 1987).

A second-grade student's principal and teacher were found to have violated her constitutional rights when she was tied to a chair for most of a school day. ***Jefferson v. Yselta Indep. School Dist.***, 817 F.2d 303 (5th Cir. 1987).

A diabetic student and her mother brought an action against her school nurse, teacher, principal, and school district for allegedly depriving her of needed medical attention. In dismissing the suit, the court held a failure to train and supervise employees, based on a single incident, did not state a section 1983 claim. ***DeFalco v. Deer Lake School Dist.***, 663 F.Supp. 1108 (W.D. Pa. 1987).

A teacher's claim that her dismissal was for "outspokenness" was denied as the court explained that in a claim of a violation of first amendment rights, the employee must establish that constitutionally protected conduct was a substantial motivating factor in the dismissal. ***Salida School Dist. R-32-J v. Morrison***, 732 P.2d 1160 (Colo. 1987).

Teachers successfully sought damages for retaliatory actions in response to a letter they wrote to the state education department. They were found to have been exercising constitutionally protected rights of free speech. ***Southside Pub. Schools v. Hill***, 827 F.2d 270 (8th Cir. 1987).

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COLLECTIVE BARGAINING

TWELFTH Series, Number 5

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Constitutional Issues

Fair Share Agreements

Dissenting employees, who brought an action against their faculty association and others claiming that the collection and use of fair service fees under an agency shop agreement violated their first and fourteenth amendment rights, could be charged a pro rata share for the cost of union activities, including expenses incident to the preparation for a strike that would have been illegal under state law, even if these activities did not directly benefit the dissenting employees' bargaining unit. ***Lehnert v. Ferris Faculty Ass'n***, 111 S. Ct. 1950 (1991).

Where nonunion employees brought suit against the board of education, its members, the union, and its officials challenging the procedure for determining the fair share or agency fee that they were required to contribute to support the union as a bargaining agent, the procedure was found to be constitutionally inadequate. It was inadequate because it failed to minimize the risk that nonunion employees' contributions might be temporarily used for impermissible purposes, since it did not provide adequate justification for advance deduction of dues, and because it failed to afford a reasonably prompt opportunity to challenge the amount of the agency fee before an impartial decision maker. ***Chicago Teachers Union, Local No. 1 v. Hudson***, 475 U.S. 292 (1986).

On remand from the Supreme Court, the fair share notice provided by a teachers' union to nonunion employees was found to be constitutionally adequate even though there were alleged errors in calculation of the fees since the notice provided nonunion members with sufficient information to challenge the fees. ***Hudson v. Chicago Teachers Union, Local No. 1***, 922 F.2d 1306 (7th Cir. 1991).

A payroll deduction agreement between a union and a school district that exempted employees who worked fewer than 15 hours per week was found not to be a fair share agreement where state law required that in order to qualify as such an agreement, all nonunion members must be required to make payments in lieu of union dues. ***Bates v. Portland Fed'n of Teachers***, 807 P.2d 306 (Or. Ct. App. 1991).

Federal rather than state labor law was applied where nonunion public school teachers brought an action to vacate arbitration awards upholding the deduction of union service fees from teachers' pay since the only issue in need of resolution was the amount of the service fee, not whether the fee would be paid. ***Kilpatrick v. Connecticut Educ. Ass'n, Inc.***, 584 A.2d 479 (Conn. App. Ct. 1991).

The constitutional requirements relating to a union's collection of agency fees can be applied retroactively to fair share fee collections under an agency fee collection plan in a collective bargaining agreement, but a nonmember's failure to object to this provision limits recovery to only the nonchargeable portion of the unconstitutionally collected fees. ***Lowary v. Lexington Local Bd. of Educ.***, 903 F.2d 422 (6th Cir. 1990).

Where a union provided adequate information to nonunion members who were considering whether to object to the collection of fair share fees, collection was upheld since the amounts deducted from nonmembers' checks was not excessive and was adequately supported by the best information available to the union at the time. ***Antry v. Illinois Educ. Labor Relations Bd.***, 552 N.E.2d 313 (Ill. App. Ct. 1990).

A suit brought by nonunion members challenging the amount of representation fees collected and the procedures used in their collection was rendered moot in light of the union's tender of the full amount of the disputed fees plus interest since it afforded the maximum possible relief continuing litigation could have provided. ***Daly v. High Bridge Teachers' Ass'n***, 575 A.2d 1373 (N.J. Super. Ct. App. Div. 1990).

In a suit by nonunion teachers challenging the constitutionality of agency fee shop collections, the association was ordered to reduce its agency fees by the amount spent for nonrepresentational expenses prior to the collection of fees, to provide adequate notice about agency shop fees to all nonmembers before any fees could be deducted from their paychecks, and to pay attorneys' fees as directed by the trial court. ***Grunwald v. San Bernardino City School Dist.***, 917 F.2d 1223 (9th Cir. 1990).

A teachers' union was prohibited from deducting full union dues from all nonunion teachers who did not file objections since their silence could not be deemed as consent to the deductions and because a significant portion of the amount collected was spent on ideological rather than representational activities. ***Mitchell v. Los Angeles Unified School Dist.***, 744 F. Supp. 938 (C.D. Cal. 1990).

A school board had no obligation to continue to deduct either dues or fair share fees for an employees' labor association after its collective bargaining agreement with the organization expired and it had a good faith reasonable belief that the organization no longer represented the majority of the bargaining unit. ***New Miami Local School Dist. Bd. of Educ. v. State Employment Relations Bd.***, 566 N.E.2d 201 (Ohio Comm. Pl. 1989).

First Amendment: Religion

No religious discrimination was present where a collective bargaining agreement that did not allow personal business days to be used for religious observance was not discriminatorily administered with respect to conditions of employment on account of religion. ***Philbrook v. Ansonia Bd. of Educ.***, 925 F.2d 47 (2d Cir. 1991).

Two teachers were unable to establish a prima facie case of religious discrimination against a union in connection with the union's collection of representation fees where they had not been discharged, threatened with discharge, or suffered any loss of privilege on the job due to the underlying dispute. ***E.E.O.C. v. Patrick Henry Educ. Ass'n***, 741 F. Supp. 670 (N.D. Ohio 1990).

First Amendment: Bargaining and Church-Operated Schools

Application of the state Labor Relations Act in a dispute over the right of teachers in a church-operated school to organize and bargain collectively violated religious protection afforded by the state constitution as well as the Establishment Clause and Free Exercise Clause of the first amendment of the United States Constitution. ***Hill-Murray Fed'n of Teachers v. Hill-Murray High School***, 471 N.W.2d 372 (Minn. Ct. App. 1991).

First Amendment: Freedom of Speech and Association

A complaint brought by a nontenured teacher alleging that her contract was not renewed when the school board, acting under color of state law, violated her constitutional rights to freedom of speech and association, equal protection, and due process was reinstated on appeal where, on the basis of the lower court's memorandum, it was impossible to determine the exact reasons for the dismissal of her claims and since her complaint appeared to adequately set forth a claim for relief. ***Irving v. School Dist. No. 1-1A, Valley County***, 813 P.2d 417 (Mont. 1991).

After a teachers' union successfully challenged a school board policy that prohibited communications concerning employee organizations by or with teachers during the school day, it was denied attorneys' fees on remand. On further appeal, the union was awarded attorneys' fees when the Court reasoned that since the union prevailed on its first amendment claims which materially altered the school district's policy limiting the rights of teachers to communicate with each other concerning employee organizations and union activities, it was entitled to such fees. ***Texas State Teachers Ass'n v. Garland Indep. School Dist.***, 109 S. Ct. 1486 (1989).

Where a union discovered a teacher's violations of its constitution and bylaws only after he left the union, it was justified in its decision not to prosecute him until after he rejoined the union as an active member; thus, there was no violation of his first amendment rights of speech and association in the absence of evidence to support his claims that the union brought the charges as a pretext to eliminate his candidacy for its presidency or to punish him for differing views. ***Ricks v. Simons***, 759 F. Supp. 918 (D.D.C. 1991).

The first amendment right of public employees to join and participate in a labor union prohibits retaliation against an employee who files a grievance with the union. Also, school officials who retaliated against teachers for associating with a union other than the exclusive bargaining agent in the district were not entitled to qualified immunity. ***Morfin v. Albuquerque Pub. Schools***, 906 F.2d 1434 (10th Cir. 1990).

A teacher who brought suit against the board of education claiming that he was was improperly discharged in retaliation for his union activities was reinstated where the board's claim of economic necessity as the basis for his dismissal was unsubstantiated. ***Temple v. Board of Educ. of School Dist. No. 94***, 548 N.E.2d 640 (Ill. App. Ct. 1989).

Recognition and Representation Issues

Unit Determination

A decision that school principals and district department heads did not play such an important role in formulation, determination, and implementation of district labor relations policy that their secretaries could not be included in the same bargaining unit was affirmed where it was supported by substantial evidence in the record and was in accord with the state's statutory policy. ***Parkway School Dist. v. Parkway Ass'n of Educ.***, 807 S.W.2d 63 (Mo. 1991).

The inclusion of an elementary school nurse in a teachers' bargaining unit was not unreasonable even though an earlier ruling had found another school nurse in the same school administrative unit to be within the support staff bargaining unit rather than the teachers' bargaining unit. In this instance, the nurse shared the same community of interest in labor relations as the teachers, worked the same hours and

annual schedule, had similar benefits, had a salary linked to the teachers' pay scale, was a certified professional employee under the supervision of the school principal, and had daily contact with parents, teachers, and children. ***Appeal of Bow School Dist.***, 588 A.2d 366 (N.H. 1991).

An appeals court ruled that the State Employment Relations Board was required to conduct a unit determination hearing after the incumbent union objected to the proposed unit description offered by the challenger union since it would have excluded a significant number of employees eligible under the incumbent union's description. ***Oregon Ass'n of Classified Employees v. Eagle Point School Dist. No. 9***, 782 P.2d 432 (Or. Ct. App. 1989).

Elections

The closing of polls for fifteen minutes during a closely contested representation election was sufficient misconduct to set aside the results in an election that was decided by only two votes out of more than 800 ballots cast. At least one employee was denied the opportunity to vote because of the break, and more than 50 eligible voters had not cast their ballots. ***Decatur Fed'n of Teachers v. Educational Labor Relations Bd.***, 556 N.E.2d 780 (Ill. App. Ct. 1990).

A decision by the state Commissioner of the Bureau of Mediation Services to void a representation election was reinstated on the ground that the Commissioner had implied power to invalidate such an election where there was substantial likelihood that the deficiency in voting procedures, namely a lack of instructions on how to obtain substitute ballots, adversely affected the election results. ***In re Investigation of Unfair Election Practices Objections***, 461 N.W.2d 215 (Minn. 1990).

The dismissal of a petition for an election to certify a bargaining representative for adult education teachers in a school district was upheld because the teachers were employees of a consortium of two districts organized to provide an adult education program on a cooperative basis. They were not employees of either constituent district even though each of the teachers taught in only one school district. ***In re Grand Haven Pub. Schools***, 454 N.W.2d 116 (Mich. Ct. App. 1990).

Rights and Obligations of Exclusive Bargaining Representatives

Union Rights

A school district's declaration of impasse over a nonmandatory subject of bargaining constituted bad faith bargaining. The certified exclusive bargaining representative of the district's employees had a statutory right to file a grievance in its own name rather than in the name of a specific complaining employee. ***South Bay Union School Dist. v. Public Employment Relations Bd.***, 279 Cal. Rptr. 135 (Ct. App. 1991).

A union's right to collect dues was affirmed as the local school board had a statutory obligation to honor union members' requests for payroll deductions of union dues; however, soverign immunity protecting the board members prevented the union from recovering damages in the amount of back dues since the board's failure to allow the payroll deduction did not relieve union members of their obligation to pay dues. ***Clevinger v. Board of Educ. of Pike County***, 789 S.W.2d 5 (Ky. 1990).

Where a teachers' union was granted a preliminary injunction directing the local school board to implement a voluntary payroll deduction plan under which it could collect dues, the board's appeal against the injunction was held to be moot since it had voluntarily reinstated a payroll deduction plan. ***Davis v. Terrebonne Parish School Bd.***, 563 So. 2d 1278 (La. Ct. App. 1990).

Even though the state Public Employee Labor Relations Board granted the petition of a local school district employee organization for an election to change its affiliation to a different state labor organization, the previously state affiliated organization was entitled to dues collected prior to the date of the change in affiliation. ***Appeal of Hinsdale Fed'n of Teachers***, 575 A.2d 1316 (N.H. 1990).

After a teacher lost her job due to a settlement between her union and school district, her motion to intervene was denied. The court ruled that as long as a union represents its members fairly it has the right to act as the exclusive representative of the bargaining unit. ***Peabody Fed'n of Teachers, Local 1289 v. School Comm. of Peabody***, 551 N.E.2d 1207 (Mass. App. Ct. 1990).

Obligations of Exclusive Representatives

Where a school district was not in breach of the collective bargaining agreement with its employees' union at the time that the union decided not to proceed to arbitration over the reassignment of one of its

counselors to part-time teaching duties, the union member's suit against the union alleging breach of its duty of fair representation was reversed in favor of the union. ***Silbert v. Lakeview Educ. Ass'n***, 466 N.W.2d 333 (Mich. Ct. App. 1991).

A union did not violate its duty of fair and adequate representation by entering into a collective bargaining agreement providing for a salary differential between those who ordinarily taught severely handicapped children and those who taught mildly or moderately handicapped children. ***Litman v. Board of Educ., City of N.Y.***, 565 N.Y.S.2d 93 (App. Div. 1991).

A demoted school employee brought suit against her union alleging breach of its duty of fair representation. Issues of material fact as to whether her claims were meritorious precluded summary judgment for either side, so the action was ordered to trial. ***Graham v. Quincy Food Serv. Employees Ass'n***, 555 N.E.2d 543 (Mass. 1990).

The dismissal of a suit brought by a former school secretary against her union for an alleged breach of its duty of fair representation was affirmed on the ground that recovery was barred by the doctrine of res judicata since the merits of her underlying grievance had been fully litigated and resulted in a ruling against her. ***Botkin v. United Fed'n of Teachers***, 561 N.Y.S.2d 730 (App. Div. 1990).

A union did not breach its duty of fair representation by failing to pursue a probationary teacher's claim that she was illegally terminated from employment. The union investigated the teacher's claim for reinstatement and decided not to pursue it since the claim had already been found to lack merit in an administrative proceeding. ***Gordon v. Board of Educ., City of N.Y.***, 562 N.Y.S.2d 180 (App. Div. 1990).

Scope of Bargaining

Mandatory Topics of Bargaining

The United States Army was required to bargain with the labor union representing elementary school teachers who provide public school education to the children of military personnel over such conditions of employment as proposals relating to mileage reimbursement, various types of paid leave, and a salary increase. ***Fort Stewart Schools v. Federal Labor Relations Auth.***, 110 S. Ct. 2043 (1990).

A proposal related to teacher workload that specified grade by grade class size limits was found to be an "other condition of employment" and so was subject to mandatory bargaining. ***Tualatin Valley Bargaining Council v. Tigard School Dist.***, 808 P.2d 101 (Or. Ct. App. 1991).

Rules relating to such matters as absence from work, insubordination, and violations of safety rules were found to impact on working conditions and thus were subject to mandatory bargaining between a school district and the union representing its bus drivers. ***Abington Transp. Ass'n v. Pennsylvania Labor Relations Bd.***, 570 A.2d 108 (Pa. Commw. Ct. 1990).

The layoff of four teachers to save money without first submitting the layoffs to bargaining was held to be subject to mandatory bargaining as an issue directly affecting terms and conditions of employment, particularly where the economic burden to a district had not been established beyond mere inconvenience and speculation. ***Central City Educ. Ass'n v. Illinois Educ. Labor Relations Bd.***, 557 N.E.2d 418 (Ill. App. Ct. 1990).

Where the negotiation of the disclosure requirements imposed on certain high ranking school officials was in the public interest of detecting and deterring official corruption and was not an impermissible restriction of the school board's responsibility, they were subject to mandatory bargaining. ***Board of Educ., City School Dist. of N.Y. v. State Pub. Employment Relations Bd.***, 555 N.Y.S.2d 659 (1990).

Permissive Topics of Bargaining

Teacher evaluation plans are subjects of permissible collective bargaining, especially if the teachers' bargaining representative does not waive the right to bargain over the development of a such a plan. Also, the parties may agree to bargain over the portions of the plan that are subject to the grievance and arbitration provisions of the collective bargaining agreement. ***Alton Community Unit School Dist. No. 11, Counties of Madison and Jersey v. Illinois Educ. Labor Relations Bd.***, 567 N.E.2d 671 (Ill. App. Ct. 1991).

A ruling by the State Board of Education that a determination over the failure to reappoint a teacher to his coaching position is a legally permissible topic of bargaining was affirmed since the hiring and firing of a coach have a greater impact on the employee and his working conditions than on the school system's educational policy. ***Board of Educ., Charles County v. Regala***, 589 A.2d 993 (Md. Ct. Spec. App. 1991).

The substantive provisions of a teacher evaluation plan, including who conducts the evaluation, were permissive, not mandatory, bargaining subjects;

however, the mechanical procedures involved in the evaluation process and the remediation plan pursuant to it were mandatory. ***Board of Educ., Leroy Community School Dist. No. 2 v. Illinois Educ. Labor Relations Bd.***, 556 N.E.2d 857 (Ill. App. Ct. 1990).

Teacher evaluation criteria, which a local school board was statutorily required to adopt, were permissive, not mandatory, bargaining subjects while the evaluation procedures were mandatory subjects. ***Board of Educ., U.S.D. No. 352 Goodland v. NEA-Goodland***, 785 P.2d 993 (Kan. 1990).

Under state law a local school board's decision to participate in an academic summer school program sponsored by the Board of Cooperative Educational Services rather than conduct its own program using teachers from the district was a permissive rather than a mandatory topic of bargaining. ***Webster Cent. School Dist. v. Public Employment Relations Bd.***, 555 N.Y.S.2d 245 (N.Y. 1990).

A school district had no duty to bargain over whether to apply for funds available under a state plan that would have made additional money available to improve teachers' salaries. The court found that the decision over participation in the program was one that the legislature intended to be at the discretion of the local board. ***City School Dist. of Elmira v. New York State Pub. Employment Relations Bd.***, 547 N.Y.S.2d 820 (N.Y. 1989).

Prohibited Topics of Bargaining

The layoff provision in a collective bargaining agreement calling for layoffs in inverse order of seniority provided that the racial balance of the schools would not be altered. The provision violated the rights of white and hispanic employees who were laid off instead of African-American employees with less seniority. ***Milwaukee Bd. of School Directors v. Wisconsin Employment Relations Comm'n***, 472 N.W.2d 553 (Wis. Ct. App. 1991).

The power to admonish, suspend, dismiss, or not to reemploy a teacher is vested in a local school board as a matter of state law. The inclusion of a binding grievance arbitration provision in a collective bargaining agreement was an impermissible delegation of the board's authority to discipline a teacher since this power is nondelegable and nonbargainable. ***Raines v. Independent School Dist. No. 6 of Craig County***, 796 P.2d 303 (Okla. 1990).

Grievability and Arbitrability

Presumption and Arbitrability: Cases Favoring Arbitration

An arbitration award calling for the reinstatement of a continuing contract teacher to his position as band director was affirmed. It was not against public policy for a teacher who successfully challenged his reassignment under the appropriate grievance procedures to be returned to his previous position by such an order. ***School Bd. of Seminole County v. Morgan***, 582 So. 2d 787 (Fla. Dist. Ct. App. 1991).

An arbitrator who concluded that the school district violated its collective bargaining agreement by its involuntary reassignment of two special education teachers had the authority to order the district to offer the teachers their original positions since his award did not violate public policy, was not irrational, and did not exceed a specifically enumerated limitation of his power. Also, this remedy did not usurp a nondelegable power of the board of education. ***Board of Educ., Arlington Cent. School Dist. v. Arlington Teachers Ass'n***, 571 N.Y.S.2d 425 (N.Y. 1991).

Where the parties negotiated the method by which employees were to be furloughed as a result of declining enrollment, an arbitrator's decision that set off a series of bumps culminating in the furloughing of a school psychologist by a teacher was not subject to being overturned on judicial review since it drew its essence from the collective bargaining agreement. ***Allegheny Intermediate Unit v. Allegheny Unit Educ. Ass'n***, 590 A.2d 1348 (Pa. Commw. Ct. 1991).

An arbitrator's finding that changing a teacher's class schedule was not a reassignment in violation of the collective bargaining agreement could not be modified by judicial review under state law since the issue was within the scope of the arbitrator's authority. However, he lacked authority to prioritize the factors that a principal may weigh in scheduling teacher assignments. ***Fort Wayne Educ. Ass'n v. Board of School Trustees of the Fort Wayne Community Schools***, 569 N.E.2d 672 (Ind. Ct. App. 1991).

An arbitrator's modification of the dismissal of a grounds keeper by his school district to a suspension was upheld. The court reasoned that an arbitration award must be upheld if, as in the case at bar, it can be derived from the collective bargaining agreement in light of the language, context, and other indicia of the parties' intentions. ***McKeesport Area School Dist. v. McKeesport School Service Personnel Ass'n, PSSPA/PSEA***, 585 A.2d 544 (Pa. Commw. Ct. 1991).

Where a teacher complained that she was transferred in reprisal for having filed an appeal of her performance evaluation but transfers were not defined as grievances within the meaning of the statute providing remedies for teachers' complaints, a lower court ruling that her allegations were subject to a grievance procedure was reversed and dismissed. ***Tazewell County School Bd. v. Gillenwater***, 400 S.E.2d 199 (Va. 1991).

A school district was entitled to arbitrate a grievance with the union representing custodians and bus drivers even though the prior collective bargaining agreement had expired and did not provide for arbitration and the subsequent agreement, which did call for arbitration, had not been ratified at the time of the alleged grievance. The court reasoned that it should not stay arbitration where the parties' agreement to arbitrate is clear but there is some ambiguity as to whether the dispute is adequately covered by the terms of the contract since such a question is a matter of contract interpretation for an arbitrator to resolve. ***In re South Orangetown Cent. School Dist.***, 570 N.Y.S.2d 409 (App. Div. 1991).

A board of education sought to stay the arbitration of a grievance relating to the discharge of a school district employee pursuant to Civil Service Law relating to reinstatement after separation for disability. Since the issue was procedural in nature, it was held to be a subject of arbitration. ***In re Board of Educ., Greenburgh No. 11 Union Free School Dist.***, 568 N.Y.S.2d 121 (App. Div. 1991).

A union was entitled to arbitration over its grievance challenging the school district's placement of newly hired teacher aides on the salary scale where the collective bargaining agreement clearly provided that recourse to arbitration was available to union members for any violation of the express provisions of the contract. ***In re Board of Educ., Cold Spring Harbor Cent. School Dist.***, 568 N.Y.S.2d 122 (App. Div. 1991).

Where a trial court improperly substituted its interpretation of a contract for that of an arbitrator who construed the contract to include longevity pay within the ambit of "annual salary" for the purposes of computing severence pay, its ruling was reversed and the arbitrator's award was confirmed. ***Board of Educ., City of Hartford v. Hartford Fed'n of Teachers, Local 1018***, 591 A.2d 821 (Conn. App. Ct. 1991).

Whether a teacher's nonrenewal was part of the staff reduction provisions of a collective bargaining contract or merely nonrenewal of an annual contract required interpretation of contract provisions and thus was a grievable issue subject to arbitration. ***Piercy v. School Bd. of Washington County***, 576 So. 2d 806 (Fla. Dist. Ct. App. 1991).

An arbitration award ordering a board of education to submit the names of sixty-two teachers to the retirement board for inclusion in the city's retirement system was entitled to a presumption of validity and did not exceed the arbitrator's authority even though the retirement board was not a party to the arbitration contract. The retirement board had the discretion to deny enrollment to the teachers. ***Board of Educ., City of Waterbury v. Waterbury Teachers Ass'n***, 583 A.2d 626 (Conn. 1990).

Any ambiguity as to whether employees were teachers covered by the collective bargaining agreement was a matter of contract interpretation for an arbitrator to resolve. ***Board of Cooperative Educ. Services v. BOCES III Faculty Ass'n***, 563 N.Y.S.2d 456 (App. Div. 1990).

An arbitrator's decision calling for the posting of two additional jobs given to the individual selected for a head basketball coaching position did not involve a unit determination outside of the scope of his authority and so was not beyond the realm of public policy or statutory guidelines. ***Eastbrook Community Schools Corp. v. Eastbrook Educ. Ass'n***, 566 N.E.2d 63 (Ind. Ct. App. 1990).

Since state policy was to refuse to compel arbitration only upon a showing that there was no agreement to arbitrate or if the issue raised was clearly beyond the scope of the arbitration provision, a suit brought by a library media specialist and her union against the school district over the interpretation of the transfer provision of a collective bargaining agreement was subject to arbitration. ***Shorey v. Jefferson County School Dist. No. R-1***, 807 P.2d 1181 (Colo. Ct. App. 1990).

In a dispute over how funds from the Excellence in Teaching Program, designed to provide additional money for teacher salaries, should be distributed, it was held that an arbitrator must resolve the disagreement since it related to the coverage of the substantive provisions of the collective bargaining agreement. ***Board of Educ., Watertown City School Dist. v. Watertown Educ. Ass'n***, 549 N.Y.S.2d 652 (App. Div. 1990).

Where a custodial worker sought arbitration over the school district's attempt to assign him to bus duty, the court affirmed the denial of a stay, reasoning that public policy is not offended by arbitration over the scope of an employee's work duties. ***Copaigue Union Free School Dist. v. Local 852, Civil Serv. Employees Ass'n***, 556 N.Y.S.2d 725 (App. Div. 1990).

After a probationary teacher denied tenure sought arbitration of a grievance alleging a violation of the procedural evaluation provisions governing

tenure, the court ruled that arbitration was appropriate; it was neither prohibited as a matter of public policy nor explicitly excluded under the terms of the operative collective bargaining agreement. ***In re Clarkstown Cent. School Dist.***, 558 N.Y.S.2d 704 (App. Div. 1990).

Where the state's labor policy not only favored arbitration but mandated it for employee grievances arising out of the meaning of a collective bargaining agreement, an arbitrator's ruling that a school violated its collective bargaining agreement when it unilaterally attempted to change its sabbatical leave policy was reinstated. ***York County Area Vocational-Technical Educ. Ass'n v. York County Area Vocational-Technical School***, 571 A.2d 105 (Pa. Commw. Ct. 1990).

An order of the Public Employee Labor Relations Board will not be set aside unless the arbitration clause is not susceptible of a reading that would cover a dispute. In a case involving only whether the parties were required to proceed to arbitration, the Board's determination ordering arbitration was upheld. ***Appeal of City of Nashua, School Dist. No. 42***, 571 A.2d 902 (N.H. 1990).

A dispute over a school district's attempt to subcontract its food services operations was subject to arbitration in so far as it was reasonably debatable whether the school board's decision to subcontract fell within the scope of the arbitration clause of the bargaining agreement in effect between the parties. ***School Serv. Employees Local Union No. 284 v. Independent School Dist. No. 88***, 459 N.W.2d 336 (Minn. Ct. App. 1990).

Whether a matter is arbitrable is a decision for the state Educational Labor Relations Board rather than the arbitrator. In this case, the management rights clause did not expressly exclude any subject matter from arbitration, rendering the grievance subject to arbitration. ***Staunton Community Unit School Dist. No. 6 v. Illinois Educ. Labor Relations Bd.***, 558 N.E.2d 751 (Ill. App. Ct. 1990).

An arbitrator's decision requiring a school board to pay a part-time teacher's additional child care expenses due to a change in her schedule was found to be drawn from the language of the collective bargaining agreement calling for the board to enforce its rules and policies equitably and thus was affirmed since the arbitrator did not exceed his authority. ***Byron Center Pub. Schools, Bd. of Educ., v. Kent County Educ. Ass'n***, 463 N.W.2d 112 (Mich. Ct. App. 1990).

Whether an employee who was the subject of a dispute was covered by the collective bargaining agreement was a matter of contractual interpretation and was properly subject to arbitration where an arbitrator was required to examine the entire collective bargaining agreement rather than a specific section. ***In re Sachem Cent. School Dist.***, 549 N.Y.S.2d 75 (App. Div. 1989).

Presumption and Arbitrability: Cases Not Favoring Arbitration

An arbitrator's order reinstating a bus driver whose employment was terminated due to unsafe driving habits was reversed based on a public policy favoring safe transportation of school children. ***Board of Educ., School Dist. U-46 v. Illinois Educ. Labor Relations Bd.***, 576 N.E.2d 471 (Ill. App. Ct. 1991).

In the absence of a collective bargaining agreement that clearly provided for arbitration of grievances concerning performance evaluations that resulted in a recommendation for the termination of a teacher's employment, proceedings to terminate a teacher's contract for just cause took precedence over arbitration of the teacher's grievance. ***Atlantic Educ. Ass'n v. Atlantic Community School Dist.***, 469 N.W.2d 689 (Iowa 1991).

In a school district's suit to enjoin a former soccer coach from arbitrating a dispute arising out of his replacement, the court ruled that arbitration was properly enjoined since the coach was hired under a supplemental contract and was not an employee within the meaning of the arbitration clause of the collective bargaining agreement. ***In re Glover***, 587 A.2d 25 (Pa. Commw. Ct. 1991).

An action brought by a nonrenewed probationary teacher who sought arbitration in order to be placed on an unrequested leave of absence resulted in a judgment against her since neither the general language of the collective bargaining agreement nor the specific arbitration clause expressed an intent to arbitrate such a dispute. ***Columbia Heights Fed'n of Teachers Local 710 v. Independent School Dist. No 13, Columbia Heights***, 457 N.W.2d 775 (Minn. Ct. App. 1990).

Who Determines

The court of common pleas properly exercised jurisdiction over a school bus driver's action seeking a determination of her contract status because until a determination was made, she had no rights which could be given due regard under the collective bargaining agreement. Additionally, her failure to exhaust administrative remedies did not bar the court's determination of her rights since any arbitration she could have agreed to prior to the determination of her contract would have been nonbinding;

only binding arbitration of such a dispute could have precluded the court's jurisdiction. ***Blair v. Milford Exempted Village School Dist. Bd. of Educ.***, 575 N.E.2d 1190 (Ohio Ct. App. 1989).

After the collective bargaining representative for paraprofessionals in a school district filed charges of unfair labor relations practices with the State Employment Relations Board (SERB) alleging that the school board violated state law by discharging a union member based on her union activities, the court ruled that the SERB's dismissal of the charge for lack of probable cause was not an adjudication subject to judicial review, thereby affirming the trial court's ruling that it lacked subject matter jurisdiction to resolve the dispute. ***Ohio Ass'n of Pub. School Employees, Chapter 643 v. Dayton City School Dist. Bd. of Educ.***, 572 N.E.2d 80 (Ohio 1991).

After a state teachers' association and individual teachers filed a writ of mandamus seeking an order to adjust salary schedules by permitting negotiations over increased salaries based on criteria other than credits earned and years of experience, the trial court dismissed their petition on the ground that they failed to exhaust administrative remedies by not appealing to the state Public Employment Relations Board. In reversing, the appellate court ruled that a determination whether the salary scale violated state law was not initially within the exclusive jurisdiction of the Board and so was properly subject to the jurisdiction of the courts. ***California Teachers' Ass'n v. Livingston Union School Dist.***, 269 Cal. Rptr. 160 (Ct. App. 1990).

Three teachers who were suspended without pay for two and one half days were unable to have their grievance submitted to arbitration and had their writ of mandate denied. The state high court reversed a grant of summary judgment in favor of the district, reasoning that the issues surrounding the short term disciplinary suspension of teachers were grievable under their collective bargaining agreement and thus not appropriate for consideration by a court. ***Debar v. Trustees, Yellowstone County Elementary School Dist. No. 2***, 796 P.2d 1081 (Mont. 1990).

In the absence of an express and unequivocal agreement in public employment to submit a dispute to arbitration, the court has jurisdiction to declare the rights of the parties. ***Board of Educ., Depew Union Free School Dist. v. Depew Teachers Org., Inc.***, 562 N.Y.S.2d 274 (App. Div. 1990).

In a second case arising out of the above dispute, the court affirmed summary judgment in favor of the school board, reasoning that a purported agreement that sought to expand the recall rights of laid off teachers contravened the express terms of state statutory law. ***Board of Educ., Depew Union Free School Dist. v. Depew Teachers Org., Inc.***, 562 N.Y.S.2d 275 (App. Div. 1990).

In an action by nontenured teachers alleging that the reasons provided by the school board in denying them continuing contracts were untrue, that their rights of free speech and association were violated, and that certain materials in their files should be removed, the filing of unfair labor practice charges with the State Employment Relations Board did not deprive the court of common pleas of jurisdiction over the teachers' identical subsequent action. ***Kingsbury v. Southeast Local School Dist. Bd. of Educ.***, 568 N.E.2d 752 (Ohio Ct. App. 1989).

After teachers in a school district successfully brought suit over their complaint that they were not provided with a duty free lunch period as required by state law, the district appealed; the court affirmed the trial court's reasoning that a collective bargaining agreement could not provide for a lunch period that violated state statutory provisions. Thus, the courts and not the State Educational Labor Relations Board had exclusive jurisdiction to hear the case. ***Semmens v. Board of Educ. of Pontiac Consol. School Dist No. 429, Livingston County***, 574 N.E.2d 1341 (Ill. App. Ct. 1991).

A returning teacher whose district refused to place her on the appropriate salary step or to grant her back pay for the time during which she was improperly classified was denied a writ of mandate for failure to exhaust administrative remedies. When the board subsequently refused to accept an arbitrator's nonbinding decision in favor of the teacher, she was granted a writ of mandate with the court ruling that the Public Employment Relations Board lacked jurisdiction over the question of the appropriate salary step. ***Dixon v. Board of Trustees of Saugus Unified School Dist.***, 265 Cal. Rptr. 511 (Ct. App. 1989).

Twelve teachers who retired under an incentive program pursuant to their collective bargaining agreement filed an unfair labor practice charge with the State Employment Relations Board (SERB) against their school board when it created a new, more favorable plan under the same contract, but before the SERB dismissed their claim, they also filed suit on virtually the same grounds. In affirming summary judgment against the teachers, the appellate court held that the trial court lacked jurisdiction to hear the teachers' claims as they were within the exclusive jurisdiction of the SERB. ***Gunn v. Board of Educ. of Euclid City School Dist.***, 554 N.E.2d 130 (Ohio Ct. App. 1988).

A suit brought by a tenured teacher who was denied tenure as a guidance counselor was dismissed

for lack of subject matter jurisdiction. The underlying dispute was covered by the collective bargaining agreement and thus was subject to the exclusive jurisdiction of the SERB. ***State ex rel. Ramsdell v. Washington Local School Bd.***, 556 N.E.2d 197 (Ohio Ct. App. 1988).

Procedural Issues

Educational personnel were not required to exhaust administrative remedies by proceeding before the state Labor Relations Commission in a dispute over the town's new method of funding employee health benefits where only questions of law were involved, where there were no disputed facts, and where there was no issue relating to the conduct of labor relations or the interpretation of the applicable collective bargaining agreement. ***Ludlow Educ. Ass'n v. Town of Ludlow***, 575 N.E.2d 359 (Mass. App. Ct. 1991).

The election of remedies doctrine did not prevent a teacher who instituted arbitration proceedings against her district from contending that it breached its collective bargaining agreement by failing to follow properly the teacher evaluation process in the contract from appealing to the state Commissioner of Education on the ground that she acquired tenure by estoppel since the issues in each forum were separate and distinct. ***England v. Commissioner of Educ.***, 564 N.Y.S.2d 809 (App. Div. 1991).

A teacher's suit against a parochial secondary school alleging that the procedures used to excess her violated the collective bargaining agreement was subject to dismissal for failure to exhaust administrative remedies under the bargaining agreement; concomitantly, she was not entitled to have the matter remanded for arbitration since the record failed to show that she availed herself of the contractual conditions precedent to binding arbitration or that the school refused to arbitrate the dispute. ***Freiburger v. Bishop Dwenger High School.***, 569 N.E.2d 755 (Ind. Ct. App. 1991).

A teacher whose contract was not submitted to the board of education for approval had her breach of the collective bargaining agreement action reinstated where the school board was precluded from claiming that she failed to exhaust administrative remedies since it refused to process her grievance based on its contention that she was not covered by the bargaining agreement. Also, her section 1983 civil rights claim was reinstated where material issues of fact concerning the reasons why her contract was not submitted to the board precluded summary judgment against her. ***Norton v. School Dist. No. 1, City and County of Denver, Denver Pub. Schools***, 807 P.2d 1160 (Colo. Ct. App. 1990).

In a dispute over whether a school district violated its collective bargaining agreement by failing to pay a teacher for one day after she refused to sign an affadavit confirming that she was absent on account of illness, the court held that in so far as the district was unable to establish that the disclosure of information from a nonparty outside of the state was necessary for it to present a viable case, it was not entitled to a stay of arbitration. ***In re Flood***, 550 N.Y.S.2d 379 (App. Div. 1990).

In affirming the dismissal of an unfair labor practice claim filed by a union on behalf of a terminated employee where the school district refused to provide information in connection with the grievance, the court reasoned that the request for discovery was too broad as not only did it involve the files of at least seven hundred bargaining unit employees, but also because the records were not relevant to the grievant in so far as he was subject to a different statute. ***Oregon School Employees Ass'n v. Salem-Keizer School Dist.***, 797 P.2d 375 (Or. Ct. App. 1990).

Where a teachers' association filed an unfair labor practice charge against its district, the state Educational Labor Relations Board (ELRB) deemed the district's failure to file a timely answer as an admission of the facts; in affirming the Board's ruling, the court reasoned that the district's motion requesting a deferral to arbitration notwithstanding, it would not grant an exception to the general rule of strict enforcement of administrative rules especially since the case involved a large governmental unit that should have known better. ***Mattoon Community School Dist. No. 2 v. Illinois Educ. Labor Relations Bd.***, 550 N.E.2d 610 (Ill. App. Ct. 1990).

Three teachers who filed a grievance in their attempt to recover several years of back pay were granted an award for the first year only as their superintendent and a hearing officer concluded that their petitions for the later years had not been filed in a timely fashion. However, the state's high court reasoned that once the event giving rise to the grievance became known and was filed in a timely fashion, the teachers were not precluded from making a claim for the subsequent years. ***Spahr v. Preston County Bd. of Educ.***, 391 S.E.2d 739 (W. Va. 1990).

Almost three years and two legal actions after a school district refused to comply with an order of the state ELRB to reinstate a first year teacher, the ELRB filed an unfair labor charge and subsequently issued an order against the district. In setting the order aside, the court reasoned that the six-month period within which to file an unfair labor practice charge was a precondition of the Board's jurisdiction

and not a mere limitation on the time period for filing charges; it was not tolled by the district's attempts to set the award aside so that the ELRB lacked the jurisdiction to issue such an order. ***Charleston Community School Dist. No. 1 v. Illinois Educ. Labor Relations Bd.***, 561 N.E.2d 331 (Ill. App. Ct. 1990).

After a teachers' association obtained a subpoena from the state ELRB seeking to compel specific documentary evidence relating to the school district's bargaining strategies, the district sought to bar the information from discovery on the ground that it was privileged and the ban against enforcing the subpoena was upheld. Since a decision over whether the materials are privileged was a most critical procedural phase in the resolution of the dispute and was more an issue of evidence than labor law, it was more appropriate for a trial court and not the ELRB to render a decision concerning the extent to which the subpoena could be enforced. ***Illinois Educ. Labor Relations Bd. v. Homer Community School Dist. No. 208***, 547 N.E.2d 182 (Ill. 1989).

Several years after the joinder of issue a teacher sought to amend her complaint against her school by deleting a libel claim and by adding claims for breach of contract and harassment, but her appeal was denied on the ground that the addition of new factual allegations would be prejudicial to the defense; also, she was precluded from judicial relief over the contractual claims as she failed to exhaust administrative remedies available under her collective bargaining agreement. ***Lebow v. Kakalios***, 548 N.Y.S.2d 686 (App. Div. 1989).

Management Prerogatives as a Bar

When state law provides that the nonreelection of probationary teachers is within the sole discretion of the school district, the school board may not delegate its statutory duty to an arbitrator. However, an arbitrator did have the power to order a district to stop violating evaluation procedures. ***Bellflower Educ. Ass'n v. Bellflower Unified School Dist.***, 279 Cal. Rptr. 179 (Cal. Ct. App. 1991).

Implicit in the state education law which charges school boards with the the duty to provide for the instruction of pupils and includes the power reasonably necessary to exercise management and control of educational matters in the district is a strong public policy creating a nondelegable duty to maintain the standards within the classroom so that such matters are barred from arbitration. ***Babylon Union Free School Dist. v. Babylon Teachers Ass'n***, 563 N.Y.S.2d 453 (App. Div. 1990).

In so far as the responsibility for filling teaching positions rests with the board and superintendent, arbitration of these decisions would impinge significantly on the board's statutorily imposed duties and so could not be permitted. ***Maine School Admin. Dist. No. 61 Bd. of Directors v. Lake Region Teachers Ass'n***, 567 A.2d 77 (Me. 1990).

Judicial Review

Salary and Benefits

The state supreme court reinstated an arbitrator's award of lost earnings to a nonrenewed teacher who was denied restoration rights by his school board. The court found that the award was not unlawful, arbitrary, or capricious and was properly drawn from the essence of the collective bargaining agreement that required the board to provide restoration rights in the form of lost wages. ***Board of Educ. of Findlay City School Dist. v. Findlay Educ. Ass'n***, 551 N.E.2d 186 (Ohio 1990).

After voters in a school district failed to approve and fund an increase in teachers' salaries for the last two years of a three year contract and the state Public Employee Labor Relations Board dismissed the district's unfair labor practice charge against the union for its refusal to reopen negotiations over the salaries, the court held that the district was not bound to fund the final two years of raises in the teachers' salaries. ***Appeal of Sanborn Regional School Bd.***, 579 A.2d 282 (N.H. 1990).

An arbitrator whose decision is final and binding will not be set aside by a court if it is within his contractual authority and not unlawful. ***Glasgow Educ. Ass'n v. Board of Trustees, Valley County, School Dists. 1 and 1A***, 791 P.2d 1367 (Mont. 1990).

An arbitrator's reliance on past practices in ordering a school district to include military service payments in the salaries of employees who started working in the district after the adoption of its collective bargaining agreement was affirmed since it was drawn from the essence of the underlying bargaining agreement even though it did not explicitly mention the payments. ***McKeesport Area School Dist. v. McKeesport Area Educ. Ass'n***, 566 A.2d 1283 (Pa. Commw. Ct. 1990).

Where an arbitrator took past practices between a school district and teachers' union into consideration in her interpretation of the salary provisions of their collective bargaining agreement, her award was upheld since her reliance on past practices did not render the decision irrational. ***Board of Educ. of North Babylon Union Free School Dist. v. North Babylon Teachers' Organization***, 548 N.Y.S.2d 38 (App. Div. 1989).

Use of Certified Employees

An arbitrator had the authority to enforce an agreement that a school district use certified physical education teachers as substitutes for junior high school gym classes since the award did not impermissibly infringe on the district's authority to determine the curriculum and the qualifications of teachers. ***Board of Educ., Yonkers City School Dist. v. Yonkers Fed'n of Teachers***, 552 N.Y.S.2d 318 (App. Div. 1990).

Seniority Rights

A teacher who was placed on an unrequested leave of absence because he was on the same salary step as a less senior teacher successfully asserted his seniority rights and was reinstated where "step" within the meaning of the collective bargaining provisions for such a situation was interpreted as years of experience plus years employed by the school district and not merely salary level. ***Fredrich v. Independent School Dist. No. 720***, 465 N.W.2d 692 (Minn. Ct. App. 1991).

Four teachers who resigned and were later reemployed with placement on the same salary step as new teachers won an arbitration award granting them credit for their past service. The award was found to be drawn from the essence of the agreement and was not manifestly unreasonable even though the collective bargaining agreement between the teachers' association and school district was silent about seniority rights. Both parties agreed that state law on point was incorporated into the contract by reference. ***Centennial School Dist. v. Centennial Educ. Ass'n***, 576 A.2d 99 (Pa. Commw. Ct. 1990).

School bus drivers and their union protested when a bus driver was returned to her former position two years after being promoted out of the bargaining unit; the restoration of her seniority rights was upheld where resignation within the meaning of the operative collective bargaining agreement applied only to resignation from the district and not the bargaining unit. ***Wheeler v. East Valley School Dist.***, 796 P.2d 1298 (Wash. 1990).

Transfer

A school district cannot consider factors such as disruption of classes and students in denying or granting transfer requests if these factors are not included in the vacancy-transfer provisions of the labor agreement negotiated between itself and the teachers' association. ***Wessington Springs Educ. Ass'n v. Wessington Springs School Dist.***, 467 N.W.2d 101 (S.D. 1991).

Promotion

A board of education that eliminated the position of department head rather than promote a teacher it believed to be unqualified was ordered to abide by an arbitrator's decision to reinstate the position and promote the teacher. The board could not use its discretionary power to eliminate the position since by doing so it sought to bypass deliberately the grievance arbitration process in its collective bargaining agreement. ***Board of Educ. of the Town of Thomaston v. State Bd. of Labor Relations***, 584 A.2d 1172 (Conn. 1991).

A ruling of the Public Employment Relations Board (PERB) holding that a board of education committed an unfair labor practice by not promoting applicants for the position of associate staff analyst on the basis of their memberships in a bargaining unit was affirmed where substantial evidence supported the PERB's finding. ***Board of Educ., City School Dist. of N.Y. v. Public Employment Relations Bd.***, 560 N.Y.S.2d 873 (App. Div. 1990).

Retirement Benefits

An arbitrator's award reinstating a teacher as a full participant in a three-year early retirement benefits program even though he retired after taking part in only the first year of the program was affirmed where the intent of the program was not violated by the teacher's retiring earlier than his originally projected date. ***Upper St. Clair Educ. Ass'n v. Upper St. Clair School Dist.***, 576 A.2d 1176 (Pa. Commw. Ct. 1990).

Discipline

After four teachers were docked a day's pay for not participating in a field trip that extended past the end of the school day, an arbitrator reduced their penalty to a formal letter of warning. However, in an unsuccessful action alleging a breach of their collective bargaining agreement and to require the school district to accept the modification, the district's petition to hold the teachers and their union liable for legal fees was granted. In an appeal limited to the propriety of the court ordered sanctions, the appellate court reasoned that since the teachers' suit was based on the results of an arbitration decision, the statute permitting the recovery of fees from parties

who brought suit without reasonable cause did not apply. ***Hazel Crest Fed'n of Teachers, Local 2077 v. Board of Educ., School Dist. 152 1/2, Cook County***, 563 N.E.2d 1088 (Ill. App. Ct. 1990).

Suspension

The two-day suspension of a teacher who removed glossaries from text books owned by the school district was affirmed as appropriate under the circumstances since the board's decision violated neither the master bargaining agreement between the teacher's union and the district nor the teacher's individual contract. ***Board of Trustees of Hamilton Heights School Corp. v. Landry***, 560 N.E.2d 102 (Ind. Ct. App. 1990).

Reduction-In-Force

In a conflict between state statutory provisions and the reduction-in-force provisions of the collective bargaining agreement, the language of the contract governed. Unlike state law, the contract did not require a continuing decline in enrollments. ***Cuyahoga Falls Educ. Ass'n v. Cuyahoga Falls City School Dist. Bd. of Educ.***, 574 N.E.2d 442 (Ohio 1991).

Dismissal

A school district's dismissal of a maintenance worker for habitual tardiness was upheld where its predischarge notices complied with the requirements of the administrative rule incorporated by the collective bargaining agreement that infractions be made in writing, dated, and a copy placed in the employee's personnel file with the original copy being sent to the employee. ***Oregon School Employees Ass'n, Chapter 89 v. Rainier School Dist. No. 13***, 808 P.2d 83 (Or. 1991).

An arbitrator's reinstatement of a tenured male high school teacher-coach, who was dismissed for immorality after he sent love letters to two female students, was reversed. The court ruled that the arbitrator lacked the authority to alter the school district's penalty since it had just cause for dismissing the teacher. ***Manheim Cent. Educ. Ass'n v. Manhein Cent. School Dist.***, 572 A.2d 31 (Pa. Commw. Ct. 1990).

Reinstatement

An action brought by an assistant superintendent seeking to annul the school board's abolition of her position was dismissed as moot. Because she voluntarily retired, she could not exercise her seniority rights under the collective bargaining agreement to be assigned to a different position and to have her name placed on a preferred eligibility list for any similar position. ***Girard v. Board of Educ., City School Dist. of Buffalo***, 572 N.Y.S.2d 185 (App. Div. 1991).

A teacher with a continuing contract who was on a valid leave of absence was entitled to reinstatement upon his return when positions for which he was qualified were open. ***Rininger v. Bennett County School Dist.***, 468 N.W.2d 423 (S.D. 1991).

A probationary teacher who was denied tenure because of her participation in protected union activity was reinstated to a tenured position where she would not have been denied tenure but for her exercise of protected rights. ***McFarland Unified School Dist. v. Public Employment Relations Bd.***, 279 Cal. Rptr. 26 (Ct. App. 1991).

An arbitration award reinstating a teaching assistant with back pay less an offset for any outside earnings was affirmed despite a poorly drafted sentence addressing the pay offset since the remainder of the award was clear, unambiguous, final, and definite. ***In re Vermilya***, 550 N.Y.S.2d 516 (App. Div. 1990).

A social studies teacher who was placed on unrequested leave of absence due to financial limitations, declining enrollment, and curricular changes in the school district was ordered reinstated where the district had a statutory duty to realign teaching positions in order to preserve her continuing contractual rights. ***In re Bristol***, 451 N.W.2d 883 (Minn. Ct. App. 1990).

A bus driver who lost his job when a school committee ordered the bus company serving its students to terminate a number of drivers was reinstated. The court reasoned that even if the arbitrator exceeded her authority by ordering the committee to reinstate a driver who was never in its employ, her decision could be interpreted as requiring the committee to order the bus company to reinstate the driver. ***School Committee of Boston v. United Steelworkers of Am., Local 8751***, 557 N.E.2d 51 (Mass. App. Ct. 1990).

Where an arbitrator found that the decision maker who dismissed a school district plant engineer for sharing marijuana with a student was not impartial and deprived him of procedural protection he was entitled to under his collective bargaining agreement, she reduced the penalty to a one-year suspension without pay and ordered his participation in an employee assistance program after returning to work. The appellate court upheld the arbitrator's award reasoning that it did not misconstrue or disregard the law, was not illegal, and did not violate strong public

policy. ***Racine Unified School Dist. v. Service Employees' International Union, Local 152***, 462 N.W.2d 214 (Wis. Ct. App. 1990).

The state PERB's reinstatement of two school bus drivers who had been dismissed by their district for being at a PERB hearing rather than transporting students was affirmed. The union established that their attendance at the hearing was a protected activity and other similarly situated employees received less severe penalties. ***Board of Educ. of Deer Park Union Free School Dist. v. State Pub. Employment Relations Bd.***, 561 N.Y.S.2d 810 (App. Div. 1990).

A teacher who was furloughed due to decreasing enrollment was reinstated because his seniority rights as they related to the furlough were adversely affected by an arbitration proceeding he was not a party to. The school board was not permitted to use the results of the proceedings against him. ***Arcurio v. Greater Johnstown School Dist.***, 582 A.2d 402 (Pa. Commw. Ct. 1990).

A teacher with a history of visual and mobility problems was reinstated to his position in a specially designed support skills program after it was found that the program was discontinued by the school district in retaliation for advice the teacher gave his colleagues in his capacity as grievance coordinator. ***Uniondale Union Free School Dist. v. Newman***, 562 N.Y.S.2d 148 (App. Div. 1990).

Impasse and Fact Finding

A school board's issuance of a unilateral contract after negotiations were completed was not an unfair labor practice, but the reduction of its salary offer after impasse procedures had been exhausted by the full amount of expenses it incurred in mediation and fact-finding was a prohibited practice. The teachers' association could receive reimbursement of the teachers' funds improperly withheld to pay for mediation and fact-finding even though the teachers had already accepted the unilaterally issued contracts. ***Unified School Dist. No. 279, Jewell County v. Secretary, Dep't of Human Resources***, 802 P.2d 516 (Kan. 1990).

A fact-finder's recommended salary schedule for teachers subsequent to impasse proceedings was affirmed based upon substantial evidence that the recommendation was the most reasonable under the circumstances. ***Moravia Community School Dist.v. Moravia Educ. Ass'n***, 460 N.W.2d 172 (Iowa Ct. App. 1990).

Strikes and Sanctions

A school board did not commit a prohibited practice when it attempted to collect liquidated damages from individual teachers who failed to fulfill the terms of their employment contracts after the board refused to release the teachers from their contracts. ***Garden City Educ. Ass'n v. Board of Educ., Unified School Dist. No. 457, Garden City, Finney County***, 805 P.2d 511 (Kan. Ct. App. 1991).

A student could not maintain an action for damages against teachers who participated in an illegal strike where state law provided that the exclusive remedy for damages caused by such a strike can only be brought by a school corporation or a school employer. ***Coons by Coons v. Kaiser***, 567 N.E.2d 851 (Ind. Ct. App. 1991).

Teachers who participated in an illegal strike could not be held liable to the school district for tortious interference with the contracts of other teachers in the district since such a finding may be counterproductive to resolving labor disputes. However, the teachers who were fired for participating in the illegal strike were not entitled to relief in so far as the district had established constitutionally sound procedures to protect their due process rights prior to its review of their employment status. ***Martin v. Montezuma-Cortez School Dist. RE-1***, 809 P.2d 1010 (Colo. Ct. App. 1990).

An offeset from teachers' back pay equal to unemployment benefits they received while on strike was upheld. The court found that nothing in public policy supports double recovery in the forms of unemployment benefits and a full award of back pay. ***St. John the Baptist Parish Ass'n of Educators v. St. John the Baptist School Bd.***, 556 So. 2d 157 (La. Ct. App. 1990).

A state law prohibiting strikes by public employees only if they endanger public health and safety did not bar a teachers' strike over the right to recognition for bargaining purposes. ***Davis v. Henry***, 555 So. 2d 457 (La. 1990).

In the absence of legislation to the contrary, the common law rule denying public employees the right to strike was applied against teachers who engaged in a work stoppage to protest the failure of the governor and state legislature to enact a satisfactory wage and benefits package. ***Jefferson County Bd. of Educ. v. Jefferson County Educ. Ass'n***, 393 S.E.2d 653 (W. Va. 1990).

Miscellaneous Decisions

A school district was not liable for an unfair labor practice allegedly committed by one of its principals who filed a civil action against members of the teachers' association where the association was unable to establish that the principal acted as an agent of the district. ***Inglewood Teachers Ass'n v. Public Employment Relations Bd.***, 278 Cal. Rptr. 228 (Cal. Ct. App. 1991).

When a ruling by the Supreme Court called into question a school district's practice of picking up and delivering the mail of its teachers' association, an arbitrator ordered a limited resumption of mail delivery, but the Postal Service apprised the parties that they risked potential civil and criminal liability for violations of the federal law which granted the Postal Service a monopoly over mail delivery. The association's motion to dismiss the district's request for declaratory judgment from a federal court, asking it to declare the rights of the parties and to decide which, if any, mail could be delivered was denied because the district had stated a sufficient cause for relief. ***Fort Wayne Community Schools v. Fort Wayne Educ. Ass'n***, 735 F. Supp. 907 (N.D. Ind. 1990).

The tentative agreement between a school district and the teachers' association was exempt from disclosure under the state's Freedom of Information Act. ***Traverse City Record Eagle v. Traverse City Area Pub. Schools***, 459 N.W.2d 28 (Mich. Ct. App. 1990).

A union seeking to compel disclosure from the state Teacher Retirement System of names and other information of teachers it hoped to contact in an effort to convince them to change union affiliation was denied because they were per se exempt from disclosure under the state's Freedom of Information Act. ***Healey v. Teachers Retirement System***, 558 N.W.2d 766 (Ill. App. Ct. 1990).

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